ARTICLE 7.2. B & C

CROSSING CRAFTS IMPROPERLY

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ARTICLE 7.2 B & C

JCIM 2004

Joint Contract Interpretation Manual

The United States Postal Service
And
The American Postal Workers Union
AFL-CIO

June 2004

employees are directed not to report ahead of the time they were scheduled to report to work. It is required to make every effort to ensure that qualified and available part-time flexibles are utilized at the straight-time rate, over the course of a pay period, prior to assigning such work to transitional employees in the same work location and on the same tour.

ARTICLE 7.2.A

COMBINING WORK IN DIFFERENT CRAFTS

Article 7.2.A provides for the combining of work from different crafts, occupational groups, and wage levels to establish full-time duty assignments under extremely limited circumstances. When management decides to create such an assignment, advance notification must be provided the affected unions, including the reason(s) for the assignment.

A combined full-time duty assignment established in accordance with the provisions of this section may not include rural carrier duties. Only duties normally performed by bargaining unit employees covered by the APWU, NALC and NPMHU Agreements may be combined.

All work within each craft (by tour) must be combined prior to combining work from different crafts, after which work in different crafts in the same wage level (by tour) may be combined in accordance with Article 7.2.A.2. After satisfying those requirements, management may create a full-time duty assignment by combining duties in different crafts, occupational groups and salary levels.

ARTICLE 7.2.B and 7.2.C

WORK ASSIGNMENTS

Article 7.2.B and 7.2.C provide that management may assign employees across craft lines when certain conditions are met.

Article 7.2.B provides for assigning employees to work in another craft at the same wage level due to insufficient work in their own craft. This applies to full-time, part-time regular and part-time flexible employees where there is "insufficient work" on a particular day to attain their respective work hour guarantee, as provided in Article 8 (Sections 8.1 and 8.8).

Section 7.2.C permits the assignment of employees to perform work in the same wage level in another craft or occupational group where there is an exceptionally heavy workload in another craft or occupational group and a light workload in the employees' craft or occupational group.

Inherent in Article 7.2.B and 7.2.C is the assumption that the qualifying conditions are reasonably unforeseeable or somehow unavoidable. While management retains the right to schedule tasks to suit its needs on a given day, the right to do this may not fairly be equated with the opportunity to, in essence, create "insufficient" work through intentionally inadequate staffing.

Generally, when the union establishes that an employee was assigned across craft lines or occupational groups in violation of Article 7.2.B or 7.2.C, a "make whole" remedy requires the payment (at the appropriate rate) to the available and qualified employee(s) who would have been scheduled to work but for the contractual violation.

ARTICLE 7.3

MAXIMIZATION

Article 7.3.A requires an 80 percent full-time work force be maintained for the combined APWU bargaining units in installations with 200 or more man years of employment in the regular work.

OFFICE SIZE

The crafts covered by the 1978 National Agreement—i.e., clerk, motor vehicle, maintenance, letter carrier and mail handler—are counted when an Agreement provision refers to the number of employees or "man years" in an office, facility or installation. Accordingly, those other crafts are included in calculating the 200 man year requirement of Article 7.3.A (at least an 80 percent full-time APWU work force).

That is also true of the Article 8, Section 8.C call-in guarantee of four hours of work or pay "in a post office or facility with 200 or more man years of employment per year," and two hours in smaller facilities. An installation's classification (whether it has 200 or more man years of employment) does not change during the life of the Agreement regardless of whether the compliment increases or decreases.

Full-time duty assignments withheld in accordance with Article 12, Section 5.B.2 count toward the full-time staffing requirement under Article 7.3. Accordingly, management may fall below the Article 7.3 required percentage of full-time staffing when withholding full-time duty assignments in accordance with Article 12.

The 200 man year list is provided to the union at the national level and is based on complement during the 26 pay periods immediately preceding the effective date of the National Agreement. The total number of paid hours accumulated by career employees in an office during the 26 pay periods immediately preceding the term of the current agreement is divided by 2080 to obtain the number of man years. The hours of any transitional employees in that office are excluded from the calculation.

FULL-TIME FLEXIBLE

Even though management has complied with the 80 percent full-time requirement in a 200 man year facility, further conversions to full-time are required when the following requirements are met:

- The part-time flexible employee works at least forty hours per week during the previous six months (paid leave hours count as work hours, except where taken to round out to forty hours)

- The part-time flexible employee worked at least five eight hour days each service week during the six month period

CROSSING CRAFTS

1. What type of work was performed?

2. Is the work in question a part of a clerk craft job description? Did you include a copy of the job description as part of the documentation of the grievance?

3. Who (what craft) performed the work other than clerks?

4. How long did the other craft employees perform clerk craft work?

5. Can management prove that there was: a) insufficient work in the employee's own scheduled assignment; b) work in the same wage level for which the employee was qualified to perform within the clerk craft (Article 7, Section 2.B.)?

6. Was there a heavy workload in the clerk craft and a light workload in the losing craft (Article 7, Section 2.C.)?

7. Were there clerk craft employees who were available and qualified to perform the work in question?

8. Could the work have been accomplished by clerk craft employees, even to the point of overtime?

9. Is the crossing craft violation a consistent occurrence? Hourly? Daily? Weekly?

10. Were any of the clerk craft employees on the Overtime Desired List?

11. Were any of the Part-time Flexible (PTF) employees not afforded an opportunity to work eight hours in a day or forty hours in a week?

12. Did you obtain statements from witnesses?

13. Did you obtain clock rings/time cards of the employees who crossed crafts and the employees who should have performed the work?

14. If rural carriers performed clerk craft duties, did you cite Article 1, Section 2 in addition to Article 7, Section 2.?

15. Corrective Action: Did you request overtime compensation for the full-time employees who should have performed the work? Did you request compensation up to the straight-time rate for any PTFs who did not work eight hours in a day or forty hours in a week? Did you request that management cease and desist from utilizing other craft employees to perform clerk craft duties?

RURAL CARRIERS PERFORMING CLERK CRAFT DUTIES

1. Determine what type of rural carrier is performing clerk craft duties – Full-time, Rural Carrier Relief (RCR), Rural Carrier Associate (RCA), Temporary Rural Carrier (TRC). This can be established by requesting the PS Form 50 of the employee(s).

2. If the carrier(s) is an RCR, RCA, or TRC, the PS Form 50 will reflect whether or not the employee has a dual appointment as a casual and will indicate the craft of the appointment.

3. Determine if the rural carrier is injured on duty. If so, request a copy of the carrier's medical restrictions and refer to Section 546 of the Employee & Labor Relations Manual (ELM).

4. Obtain statements from other clerk craft employees and/or provide a description of the types of clerk craft duties the rural carrier is performing (boxing mail, letter or flat distribution, etc.)

5. Obtain clock rings/time cards to show the number of hours the rural carrier performed work in the clerk craft. If clock rings/time cards are not available, statements from clerk craft employees will have to suffice.

6. Obtain clock rings/time cards of the clerk craft employees in the office (full-time and PTF). Determine how the clerk craft employees were harmed (PTFs were not working 40 hours weekly, overtime could have been utilized among the clerk craft employees).

7. Cite Article 1, Section 2, "Exclusions", and Article 19, specifically the Employee & Labor Relations Manual (ELM), Section 323.6, when filing the grievance.

8. Request as a remedy that the clerk craft employees be compensated for all hours that the rural carrier(s) performed clerk craft duties, including the overtime rate if applicable. Also, include in the corrective action that management cease and desist from utilizing rural carriers to perform clerk craft work.

Issue *Crossing Crafts Improperly*

Article 7.2B & C

Documentation	Explanation
All grievance paperwork	All paperwork developed and utilized in grievance procedure
Work schedule, clock rings (ETC), or other documentation showing cross craft assignment(s)	Proves cross craft assignment occurred. First step in proving violation is remembering four (4) part criteria: 1) same wage level 2) qualified 3) exceptionally heavy work load periods 4) light work load period
Witness(es) statement which tells us what happened on given day or days involving cross craft assignment(s)	Helps validate union contentions and brings specifics to the front. Possible witness if case goes to arbitration
Interview with appropriate supervisor or manager on why they assigned across craft lines	Ties down management's reason(s) for doing so. Stops building of management's case at later date. Union should ask if criteria of 7.2.B & C met and carefully write down response
Documents which show who scheduled and who worked - be sure to include all types of leave taken	Tells us if management had normal compliment or short handed
Volume reports which show heavy or light day	Remember Article 7.2.C says "exceptionally heavy work load periods"
Overtime records for both involved crafts, normally will be carrier to clerk	Be sure documentation ties to area left and place reassigned to
Applicable case law. Remember difference between precedent and persuasive value	Strengthens case through Step 4s, national arbitrations or pre-arbs, regional arbitrations or pre-arbs. Cites must be on point

THE ISSUE: CROSSING CRAFTS, OCCUPATIONAL GROUPS, AND/ OR WAGE LEVELS

THE DEFINITION

Management may not normally make cross-craft or cross-occupational group assignments unless there is an insufficient workload in the losing craft and an unusally heavy workload in the gaining craft.

THE ARGUMENT

The circumstances under which cross-craft or cross-occupatinal group assignments may be appropriate are very limited. Article 7 is a general prohibition against such assignments with very limited exceptions. If management claims an insufficient workload in one craft and an unusually heavy workload in another, the burden shifts to the Employer to prove those claims. Management may not make such assignments solely to avoid overtime in one craft or occupational group.

THE INTERVIEW

•What work did Letter Carrier Smith perform on Wednesday between 0700 and 0900?

•Isn't (distribution of parcel post) normally Clerk Craft work in this office?

•Who made the decision to make this cross-craft assignment?

•Why did you decide to use Letter Carrier Smith to perform this Clerk Craft work?

•Why couldn't you have used Clerks to perform this work?

•Wasn't one of your major concerns the fact that you would have had to bring in a Clerk on overtime?

•How much overtime did the Letter Carrier Craft work on the day in question?

•How much overtime was worked in the Clerk Craft on that day?

THE DOCUMENTATION

•Job description of employees assigned across crafts, occupational groups or levels

•Job description of employees normally performing this work

•Clock rings of employees assigned across crafts, occupational groups or levels

•Clock rings or work hour summary for all members of craft (overtime level in losing craft)

•Clock rings or work hour summaries in gaining craft (overtime level in gaining craft)

•Mail volume reports

•Identify or document work available in employee's own craft

•Witness statements or interviews

•Supervisor interviews or statements

•Light / limited duty job offer (if applicable)

•Medical restrictions of employee (if any) being assigned across craft lines

•Transfer hours report

THE AGREEMENT

•National Agreement, Article 7.2
•National Agreement, Article 13
•National Agreement, Article 19
•Employee & Labor Relations Manual, Part 546

Advocates

Crossing Crafts Improperly
Article 7.2.B. & C.

Needs

✓ Remember to prove management violated Article 7 by improperly crossing crafts you need to address four (4) points:

1) Available work in same wage level - Article 7.2.B.
2) Employee must be qualified - Article 7.2.B.
3) Gaining craft must be experiencing "heavy work load periods" - Article 7.2.C. (Remember no occupational groups in clerk craft for purposes of this dispute)
4) Losing craft must be experiencing "light work load period".

✓ Excerpts from Article 7 analysis done by NBA's Kessler/Casillas, see attachment #1. Gives a good overview of what the language means, how it has been interpreted, and what you need to win, see attachment #1.

✓ Documentation from C. Guffey on crossing crafts prior to using casuals; includes pre-arb on case H7C-NA-C-72, attachment #2. Tells us contractual language under 7.2 requires qualification, same wage level, and light work load in own craft and heavy work in other craft (NALC). We would not be able to argue mail handlers as they are a different level

✓ Two additional national cases go to this issue:

> **Block, A8-W-0656, 4/7/82.** Dispute involved a cross craft assignment where management brought a PTF carrier over to Special Delivery rather than bringing a ODL-SDM in. Arbitrator found management's right to cross craft substantially limited (page 6). As normal day in special delivery craft and overtime day in letter carrier craft, assignment was improper. Granted ODL person 6.35 hours of overtime; see attachment #3.

Mittenthal, H8C-2F-C-7406, DATED 8/23/82. Dispute went to management assigning a mail handler to distribution clerk work. On day in question, mail handler worked first three (3) hours as mail handler and last five (5) as clerk. Arbitrator sustained grievance relying on Bloch and practice of parties. Granted five (5) hours at the straight time rate as no overtime needed or scheduled on day in question; see attachment #4.

✓ Synopses of a variety of regional arbitration awards with full texts as attachments.

Foster **S1C-3W-C-17074** **October 17, 1984**

Dispute went to PTF letter carriers doing clerical work rather than using the ODL. Parties agreed heavy mail volume as during the Christmas season. No dispute PTF carriers qualified, same wage level, and available work on an exceptionally heavy work load day. Arbitrator sustained grievance as heavy work load in both crafts as seen through the use of overtime. Part of the limitation criteria is a light work load day. Didn't exist on the three (3) days in question. Language and equal amounts of overtime granted to ODL in clerk craft; see attachment #5.

Ames **W7C-5F-C-27965** **October 22, 1993**

Management temporarily assigned a letter carrier to AIS. Union argued clerk work. Management argued work not on any clerk bid. Work involved upgrading labels and cases, and inputting information into a computer. Arbitrator found work historically done by clerks. Data collection and entry duties clerical work. Sustained grievance and awarded compensation to senior qualified clerk; see attachment #6.

Stallworth **C0C-4U-C-5444, et al** **November 17, 1994**

Local settlement gave palletized mail distribution to the clerks. Later management used mail handlers to work the mail. Arbitrator upheld local settlement which gave work to clerks and required the conditions of Article 7.2.B. & C. be met before mail handlers could work this mail. Interesting to note no one argues same salary level. Awarded equal

overtime to affected clerks; see attachment #7.

Baldovin, Jr. **G87C-4G-C-91025373** **February 23, 1995**

Dispute on PTF carriers being regularly scheduled in advance to do clerk work. Management argued simultaneous scheduling and efficiency. Service also argued past practice. Arbitrator set aside management arguments and sustained grievance based on national award by Bloch and clear reading of Article 7.2.B. & C. Limited remedy based on fact circumstances; see attachment #8.

Article 7, Section 2.B. & C.

The provisions of 7.2B allow management to assign full-time or part-time employees across craft lines on any given day or days in which there is insufficient work to keep the employee gainfully employed. That assignment must be to work in the same wage level.

This provision does not allow management to 'create" insufficient work through intentionally inadequate staffing.

The provisions of 7.2.C. provides that when an exceptionally heavy work load occurs for one occupational group and there is at the same time a light workload in another occupational group, craft lines may be crossed.

This provision requires an exceptionally (note emphasis) heavy workload in one group with a light work load in another group at the same time (note emphasis). Both of these elements must be present at the same time in order to justify a cross-craft assignment from one occupational group to another. (There are no separate occupational groups for the clerk craft - a clerk is a clerk -

These provisions have been interpreted by National Arbitrators Bloch and Mittenthal. Those interpretations address both B. and C.

Arbitrator Bloch, in National Case #H8S-5F-C-8027, addresses the possibility pursuant to 7.2.B. of management creating insufficient work:

> "Inherent in these two provisions, as indicated above, is the assumption that the qualifying conditions are reasonably unforeseeable or somehow unavoidable. To be sure, Management retains the right to schedule tasks to suit its needs on a given day. But the right to do this may not fairly be equated with the opportunity to, in essence, create 'insufficient' work through intentionally inadequate staffing. To so hold would be to allow Management to effectively cross craft lines at will merely by scheduling work so as to create the triggering provisions of Subsections B and C. This would be an abuse of the reasonable intent of this language, which exists not to provide means by which the separation of crafts may be routinely ignored but rather to provide the employer with certain limited

flexibility in the face of pressing circumstances."

Arbitrator Bloch addresses both B. and C. by the following observation.

> "Taken together, these provisions support the inference that Management's right to cross craft lines is substantially limited. The exceptions to the requirement of observing the boundaries arise in situations that are not only unusual but also reasonably unforeseeable. There is no reason to find that the parties intended to give Management discretion to schedule across craft lines merely to maximize efficient personnel usage; this is not what the parties have bargained. That an assignment across craft lines might enable Management to avoid overtime in another group for example, is not, by itself, a contractually sound reason. It must be shown either that there was 'insufficient work' for the classification or, alternatively, that work was 'exceptionally heavy' in one occupational group and light, as well, in another."

Arbitrator Mittenthal, in National Case #H8C-2F-C-7406 upholds the Bloch interpretation while specifically addressing the "same wage level" element.

> "The principle seems clear. Where Management makes a cross-craft assignment, it must justify that assignment under the terms of VII-2-B or VII-2-C. If no such justification is provided, the cross-craft assignment is improper under the 'inherent proscription...' in VII-2. The Postal Service does not claim Arbitrator Bloch's interpretation is incorrect. It has not asked me to modify or overrule his award.
>
> However, the statement of this principle does not resolve the present dispute. The Mail Handler who was dumping sacks on the evening mini-tour on July 27, 1980, ran out of work after three hours. There was 'insufficient' work for him that day. That fact gave Management the right, under VII-2-B, to 'assign the employee (here the Mail Handler) to any available work in the same wage level for which the employee is qualified..." Plainly, more than one condition must be satisfied before a cross-craft assignment can be validated by VII-2-B, there must be not only (1) 'insufficient work' for the employee <u>but also</u> (2) other 'available work' (3) which he is 'qualified to perform' and (4) which is 'in the same wage level'."

The principles outlined by Bloch and Mittenthal are clear. In order to justify a cross-craft assignment, management must be able to demonstrate pursuant to B. that there was insufficient work for the employee or employees in their own assignment or that there was exceptionally heavy work in one group and light work in another at the same time pursuant to C.

Given this interpretation, the facts and circumstances pertaining to each incident becomes the basis for determining whether or not the assignment was in violation of the Agreement.

Grievances - Article 7.2.B. and C.

A substantial number of arbitration awards exist which have addressed the various types of cross-craft assignments which occur. The principles involved in B. and C. are firmly established and recognized. Grievances involving this issue have basically been reduced to a "facts and circumstances" situation.

The initial burden of proof for the union is to prove that a cross-craft assignment took place. Once it has been established that the work in question is indeed that of our craft, the burden shifts to management to justify that assignment within the provisions of B and/or C, as interpreted by Bloch and Mittenthal. We then, of course have a burden to rebut their justification with evidence of our own to show that there was not insufficient work in the other craft or alternately that there was no exceptionally heavy work load in our craft while the other craft was experiencing a light work load at the same time.

The type of cross-craft assignments which seem to involve a large percentage of our arbitration awards on the subject are part-time flexible carriers working in the clerk craft and the crossing of occupational groups in the maintenance craft.

There are a number of awards addressing these type circumstances which are available through our office. A partial list follows.

In addressing the issue of PTF carrier to clerk work you should bear in mind that a PTF may not be assigned clerk work pursuant to 7.2.B. under the guise of providing them their "guarantee" of 2 or 4-hours per day. Part-time flexible carriers do not have a "basic work week" and they are not "guaranteed" 2 or 4-hours of clerk work!

Some caution should be exercised in addressing the issue of carrier to clerk in small offices where it is standard practice to use employees interchangeably. Experience teaches us that clerks do as much, or more, carrier work that vice-versa in small offices. If there are any questions regarding this issue at a specific installation inquiry should be made through our office.

Postal management will argue that the carrier job description and qualification standard contains language which allows carriers to perform clerk duties. This position has been soundly rejected by arbitrators. (Seidman - C1C-4K-C-14121; Foster - S1C-3W-C-17074; Dolson - C4C-4G-C-1890; Grabb - C1C-4J-C-14540)

Management has been successful in cases where they can show that crossing crafts is the only way the work could be performed or where an "emergency" or unique and/or unforseen circumstance occurred (Massey - S4V-3W-C-26023).

Management has not been successful where their inept scheduling has created the alleged justification for the assignment (Sherman - S4C-3S-C-43425).

Management may not invoke a claim of "past practice" to justify assigning across craft lines as past practice cannot serve to alter the clear and unambiguous language of 7.2.B. and/or C.

Finally, crossing crafts to avoid O.T. is never justified as stated by Bloch/Mittenthal and an unlimited number of regional arbitrators.

Available Awards

PTF Carrier to Clerk

Cohen	C8C-4M-C-26028	Ft. Dodge, IA
Seidman	C1C-4K-C-14132	St. Charles, MO
Scearce	S1C-3Q-C-5451	Metairie, LA
Dolson	C4C-4G-C-1890	Indianapolis, IN
Martin	C1C-4E-C-21318	Wooster, OH
Foster	S1C-3U-C-45492	Austin, TX
Foster	S1C-3W-C-17074	Ft. Meyers, FL
Grabb	C1C-4J-C-14540	Waukesha, WIS
Sherman	S4C-3S-C-43425	Ft. Myers, FL

Documentation/Remedy 7.2.B.C.

Work schedules, clock rings, or any other type documents which clearly demonstrates a cross-craft assignment to have taken place.

Any documentation available to disprove management's claims of justification for the assignment:

Insufficient Work

Leave records to determine employees taking A.L., L.W.O.P., etc.

Clock rings of PTFs to check for short work hours.

Overtime records (there should be no overtime).

Mail volume reports.

Exceptionally Heavy and Light

Light - All of the items Listed for "insufficient".

Exceptionally Heavy - Overtime records - "Everybody should be working O.T. if work load is exceptionally heavy. Heavy doesn't count!!

Mail volume reports.

Leave records.

Remedy:

Any grievance involving cross craft assignments requires compensation for the appropriate members of the craft which lost the work to another craft, at the appropriate overtime rate.

ATTACHMENT # 2

American Postal Workers Union, AFL-CIO

1300 L Street, NW, Washington, DC 20005

November 1, 1990

C. J. "Cliff" Guffey
Assistant Director
Clerk Division
(202) 842-4233

TO: Regional Coordinators &
National Business Agents

SUBJECT: Crossing Crafts Prior to Utilizing Casuals In Another Craft.

Dear Fellow Officers:

Executive Vice President Bill Burrus recently settled National Case H7C-NA-C-72. This settlement reinforces that management is required to satisfy Article 7.2 before crossing crafts with a PTF even in 7.1.B.2 situations. We will also be required to meet that burden should we grieve the availability of a PTF in one of our crafts while casuals work in another craft.

Enclosed are: (1) Settlement of National Case 72, (2) 1976 Conway Memo and (3) 14 Arbitrations on this subject.

Fraternally,

C.J. 'Cliff' Guffey

CJG:sec
opeiu #2
afl-cio

cc: Kenneth Wilson, Director
Clerk Division

Tom Neill, Director
Industrial Relations

APWU

American Postal Workers Union, AFL-CIO

1300 L Street NW Washington, DC 20005

William Burrus
Executive Vice President
(202) 842-4246

February 12, 1990

Dear Mr.Mahon:

Pursuant to the provisions of the 1987 National Agreement the APWU initiates a step 4 grievance over the employer's interpretation of the right to assign PTF employees across craft lines without satisfying the expressed limitations of Article 7, Section 2.

Local managers are relying on regional arbitration decisions that have improperly determined that the use of casuals in a specific craft and work location satisfies the restrictions of Article 7, Section 2.

The American Postal Workers Union disagrees with this interpretation and request your decision.

Sincerely,

William Burrus
Executive Vice President

Joseph J. Mahon, Jr.
Asst. Postmaster General
U.S. Postal Service
475 L'Enfant Plaza, SW
Washington, DC 20260-4100

WB:rb

FEB 1990
Received

Mr. William Burrus
Executive Vice President
American Postal Workers
Union, AFL-CIO
1300 L Street, N.W.
Washington, DC 20005-4128

Re: H7C-NA-C 72
W. Burrus
Washington, DC 20005

Dear Mr. Burrus:

On March 9, 1990, we met to discuss the above-captioned case at the fourth step of our contractual grievance procedure.

The issue in this grievance is whether PTF employees may be assigned across craft lines without satisfying the limitations of Article 7.2 of the National Agreement.

During our discussion, we mutually agreed that the assignment of PTF employees across craft lines is controlled by the express language of Article 7.2 of the National Agreement as interpreted by national level arbitrators. We further agreed to fully and finally settle this grievance and close the case on this basis.

Please sign and return the enclosed copy of this letter indicating that the APWU concurs with this interpretation and as your acknowledgment of agreement to close this case.

Time limits were extended by mutual consent.

Sincerely,

Arthur Wilkinson
Grievance & Arbitration
Division

William Burrus
Executive Vice President
American Postal Workers
Union, AFL-CIO

DATE 4/4/90

American Postal Workers Union, AFL-CIO
817 14th STREET, N. W., WASHINGTON, D. C. 20005

WAS

February 11, 1976

Mr. Dennis Waitzel
Director
Office of Contract Analysis
Labor Relations Department
U. S. Postal Service
Washington, D. C.

Dear Mr. Waitzel:

This Union has been advised that casuals are being utilized in some offices where part-time flexible employees are not receiving 40 hours of work per week.

It is the position of the American Postal Workers Union that casuals constitute a supplement to the regular work force and that the use of casuals where career part-time flexible employees are not working 40 hours per week is improper. We do not believe that such utilization of casuals to the detriment of career employees was the intent of the negotiators.

I would appreciate your advising me of the official position of the Postal Service at your earliest convenience.

Sincerely yours,

Emmet Andrews, Director
Industrial Relations

EA/ac

EMPLOYEE AND LABOR RELATIONS GROUP
Washington, DC 20260

February 24, 1976

Mr. Ernest Andrews, Director
Industrial Relations
American Postal Workers Union
AFL-CIO
817 - 14th Street, N. W.
Washington, D. C. 20005

Re: Article VII, Section 1.B;
Casuals

Dear Mr. Andrews:

This is in response to your letter of February 11, 1976 concerning the utilization of Casuals. You indicate it is the position of the APWU that it is improper to utilize Casuals where career part-time flexibles are not working 40 hours per week.

Discussions on this subject during the course of bargaining for the 1975 Agreement resulted in the addition of certain language to Article VII, Section 1.b.1. This new contractual obligation does not preclude the utilization of Casuals where part-time flexible schedule employees are not working 40 hours per week. It does impose upon the Postal Service the obligation to make every effort to insure that qualified and available part-time flexible employees are utilized during the course of a service week at the straight time rate prior to assigning such work to Casuals.

Sincerely,

Dennis R. Weltzel, Director
Office of Contract Analysis
Labor Relations Department

SENIOR ASSISTANT POSTMASTER GENERAL
EMPLOYEE AND LABOR RELATIONS GROUP
Washington, DC 20260

June 22, 1976

MEMORANDUM TO: Regional Postmasters General

SUBJECT: Utilization of Casual Employees

As a result of a number of grievances received by this office, it is necessary to reaffirm the responsibilities of the U. S. Postal Service pursuant to the provisions of the National Agreement regarding the utilization of casual employees. The provisions in Article VII, Section 1 B 1 of the 1975 National Agreement state in part, "during the course of a service week, the employer will make every effort to ensure that qualified and available part-time flexible employees are utilized at the straight time rate prior to assigning such work to casuals."

This provision requires that the employer make every effort to ensure that qualified and available part-time employees with flexible schedules are given priority in work assignments over casual employees. Exceptions to this priority could occur, for example, (a) if both the part-time flexible and the casual employee are needed at the same time, (b) where the utilization of a part-time flexible required overtime on any given day or where it is projected that the part-time flexible will otherwise be scheduled for 40 hours during the service week, or (c) if the part-time flexible employee is not qualified or immediately available when the work is needed to be performed.

Furthermore, in keeping with the intent of the National Agreement that casuals are to be utilized as a supplemental work force, every effort should be made based on individual circumstance to utilize part-time flexible employees across craft lines (see Article VII, Section 2) in lieu of utilizing casual employees.

Please ensure that local officials are made aware of these guidelines concerning the utilization of casual employees.

James V. P. Conway

cc: Regional Directors, E&LR
Mr. Bolger
Mr. Dorsey

In the Matter of the Arbitration Between:

UNITED STATES POSTAL SERVICE

AND

AMERICAN POSTAL WORKERS UNION, AFL-CIO

H8S-5F-C 8027

Case No.(A8-W-0656)

Hearings Held October 23, 1981 and January 8, 1982

Before Richard I. Bloch, Esq.

APPEARANCES:

For the Union

James Adams

For the Postal Service

Donald Freebairn

OPINION

Facts

Grievant G. Robertson, a member of the Special Delivery Craft, here contests Management's failure to call him in for overtime work on November 23, 1979. He was not scheduled for work that day and, it is undisputed, Management made no effort to call him in. Instead, a part-time flexible City Carrier was assigned to perform Special Delivery functions for a total of 6.35 hours at straight time.[1]

[1]The parties stipulate to the following facts:

1. On November 23, 1979, FTR Special Delivery Carrier Robertson

Issue

Did Management's actions constitute a violation of either Articles VII or VIII of the National Agreement?

Union Position

The Union maintains that Management may cross Craft lines only in accordance with certain provisions of the Labor Agreement. However, there were no provisions applicable to the circumstances of this case, it is claimed. Accordingly, it was improper to utilize the Carrier for Special Delivery tasks. As a result, Grievant was deprived of an overtime assignment which, according to Article VIII of the Labor Agreement, should have been offered him.

Relevant Contract Provisions

ARTICLE VII
EMPLOYEE CLASSIFICATIONS

Section 2. Employment and Work Assignments

A. Normally, work in different crafts, occupational groups or levels will not be combined into one job. However, to provide maximum full-time employment and provide necessary flexibility, management may establish full-time schedule assignments by including work within different crafts or occupational groups after the following sequential actions have been taken:

1. All available work within each separate craft by tour has been combined.

2. Work of different crafts in the same wage level by tour has been combined.

The appropriate representatives of the affected Unions will be informed in advance of the reasons for estab-

lishing the combination full-time assignments within different crafts in accordance with this Article.

B. In the event of insufficient work on any particular day or days in a full-time or part-time employee's own scheduled assignment, management may assign the employee to any available work in the same wage level for which the employee is qualified, consistent with the employee's knowledge and experience, in order to maintain the number of work hours of the employee's basic work schedule.

C. During exceptionally heavy workload periods for one occupational group, employees in an occupational group experiencing a light workload period may be assigned to work in the same wage level, commensurate with their capabilities, to the heavy workload area for such time as management determines necessary.

ARTICLE VIII
HOURS OF WORK

Section 5. Overtime Assignments

When needed, overtime work for regular full-time employees shall be scheduled among qualified employees doing similar work in the work location where the employees regularly work in accordance with the following:

A. Two weeks prior to the start of each calendar quarter, full-time regular employees desiring to work overtime during that quarter shall place their names on an "Overtime Desired" list.

B. Lists will be established by craft, section, or tour in accordance with Article XXX, Local Implementation.

Analysis

Special Delivery Carriers under this Labor Agreement are contractually distinct from City Letter Carriers.[2] Section 2

[2]The distinction among crafts is recognized, for example, in Section 2 -- Employment and Work Assignments. Paragraph A specifies that "Normally, work in different crafts, occupational groups or levels will not be combined into one job."

deals with, among other things, limited circumstances wherein the inherent proscription against crossing craft lines is inapplicable.[3] Paragraph B states:

> In the event of insufficient work on any particular day or days in a full-time or part-time employee's own scheduled assignment, management may assign the employee to any available work in the same wage level for which the employee is qualified, consistent with the employee's knowledge and experience, in order to maintain the number of work hours of the employee's basic work schedule.

This mutually-agreed upon provision specifies that the eventuality of "insufficient work" on a given occasion will justify the crossing of craft lines for the purpose of providing an employee an eight-hour work day. Section C presents a variation:

> During exceptionally heavy workload periods for one occupational group, employees in an occupational group experiencing a light workload period may be assigned to work in the same wage level, commensurate with their capabilities, to the heavy workload area for such time as management determines necessary.

This clause refers primarily to a situation where "exceptionally heavy work" occurs in another occupational work group, as opposed to the "insufficient work" discussed in Paragraph B. Section C provides that, when such heavy workload occurs, and when there is at the same time a light load

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[3]Other sections, inapplicable to this case, also provide some flexibility in terms of crossing craft lines. See Article XIII.

in another group, craft lines may be crossed.

Taken together, these provisions support the inference that Management's right to cross craft lines is substantially limited. The exceptions to the requirement of observing the boundaries arise in situations that are not only unusual but also reasonably unforeseeable. There is no reason to find that the parties intended to give Management discretion to schedule across craft lines merely to maximize efficient personnel usage; this is not what the parties have bargained. That an assignment across craft lines might enable Management to avoid overtime in another group for example, is not, by itself, a contractually sound reason. It must be shown either that there was "insufficient work" for the classification or, alternatively, that work was "exceptionally heavy" in one occupational group and light, as well, in another.

Inherent in these two provisions, as indicated above, is the assumption that the qualifying conditions are reasonably unforeseeable or somehow unavoidable. To be sure, Management retains the right to schedule tasks to suit its needs on a given day. But the right to do this may not fairly be equated with the opportunity to, in essence, create "insufficient" work through intentionally inadequate staffing. To so hold would be to allow Management to effectively cross craft lines

at will merely by scheduling work so as to create the triggering provisions of Subsections B and C. This would be an abuse of the reasonable intent of this language, which exists not to provide means by which the separation of crafts may be routinely ignored but rather to provide the employer with certain limited flexibility in the face of pressing circumstances. There is no evidence that the provisions have been applied in a contrary manner in Colorado Springs.

Thus interpreted, the question becomes purely one of fact: Did the circumstances here at issue justify Management's invoking Section 2(B) or 2(C) in order to cross craft lines on the day in question?

From the testimony and by Management's candid acknowledgement, it is apparent that Section 2(C) is inapplicable to this situation. There was neither an "exceptionally heavy workload" in the Special Delivery Craft nor a "light workload" in the Letter Carrier group. The sole question, then, is whether one may reasonably find there was "insufficient work" for letter carriers on the day in question so as to warrant re-assigning employee Groce to the Special Delivery Group.

Under the circumstances, there having been a crossing of craft lines, it is appropriate that Management provide justification for the action. Its contention is as follows.

Scheduling for the week in question was completed, as is the normal case, on Wednesday of the preceding week (November 14). Included in the staffing calculations was the fact that the Thanksgiving holiday would fall on Thursday, November 22. The day in question was November 23, the next full work day. All available routes were covered that day by regularly scheduled personnel. In addition, however, the supervisor speculated that, the day after the holiday, there might be sick calls, emergency annual leave or other absences. Accordingly, he scheduled two additional letter carriers.

The supervisor arrived at 6:45 a.m. on the 23rd and found, contrary to his expectations, that there had been no sick calls in the Letter Carrier Craft and that, moreover, the volume in Special Delivery was higher than normal. The supervisor determined that bringing in two scheduled afternoon Special Delivery Messengers two hours early would adequately compensate for the increased load. Then, having assigned one of the two extra Letter Carriers to carrying bumps or assisting on other routes, he assigned the remaining Carrier, Mr. Groce, to Special Delivery work. As stipulated by the parties, Mr. Groce worked 6.35 hours in that capacity.

For the reasons that follow, the finding is that this assignment was improper. Particular care should be employed

in reading this Opinion, for the finding is closely confined to the particular facts of the day.

There is no reason to doubt either that the original scheduling of the two extra personnel was unreasonable or that the full turnout on the 23rd was foreseeable. Indeed, the contrary might generally have been expected. The problem here is with the supervisor's conclusion that there was inadequate work for Mr. Groce in the Letter Carrier Craft. In the overall, the finding is that the supervisor's decision was based not so much on the fact of "insufficient" work in the Letter Carrier Craft as on his conclusion that the "extra" Carrier could be generally utilized more effectively in the Special Delivery ranks. This approach was not consistent with the contractual requisites. To be sure, all routes had been covered in the Letter Carrier group and there were two additional employees available that day. However, it is also true that some forty-six hours of overtime were performed in the Letter Carrier group. There is some dispute as to whether this overtime arose later in the day as a result of difficulty in completing snow-covered routes. It is also apparent, however, that the storm had occurred some days earlier and that, in terms of foreseeability, one might have expected that help would be required. Moreover, while Management contends that assigning Groce to the Letter Carriers would

simply have been "make work," it would also appear that the supervisor believed, early on, that calling in two Special Delivery carriers two hours early for the afternoon shift would adequately account for those needs. Therefore, the assignment across craft lines to the Special Delivery Craft could also have been seen, at that point, as "make work."

In retrospect, one may conclude both that the assignment across craft lines in these particular circumstances was improper and that, assuming the need in that craft, the eligible employee should have been called in on overtime. Accordingly, the Union's request for overtime payment will be sustained to the extent of the violation.

A final comment is here in order. Nothing in this Opinion should be construed as requiring that supervisory judgments in these matters be anything more than reasonably rendered under the facts available at the time. Hindsight may often provide a better perspective but will not necessarily require the conclusion that the assignment was wrong. In each case, the particular facts and circumstances must be scrutinized. But one must proceed on the premise that crossing craft lines is prohibited and that the contractual exceptions are not to be invoked unless clearly met. In this case, the evidence relevant to this particular fact situation

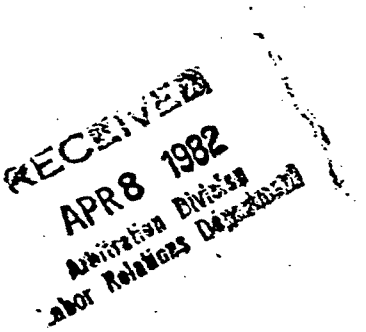
fails to sustain Management's responsibility of showing "insufficient" work in the Letter Carrier unit.

AWARD

The grievance is granted. G. Robertson was improperly denied overtime pay on the day in question and shall be granted 6.35 hours' pay at overtime rates.

Richard I. Bloch, Umpire

April 7, 1982



ARBITRATION AWARD

ATTACHMENT # 4

August 23, 1982

UNITED STATES POSTAL SERVICE

-and-

Case No. H8C-2F-C-7406
A8-E-1157

AMERICAN POSTAL WORKERS UNION

APPEARANCES:

For the Union
John P. Richards, Director
Industrial Relations Department

For the Postal Service
James J. Stanton
Manager, Grievance Branch
Labor Relations Division

Subject: Propriety of Cross-Craft Assignment

Statement of the Issue: "Did Management have the right to make such a (cross-craft, Mail Handler to Clerk,) assignment under Article III of the National Agreement? Did Management violate Article VII, Section 2-B and/or C, Article VIII, Section 5 or Article XXV in making such assignment?"

Contract Provision Involved: Articles III, VII, VIII and XXV of the July 21, 1978 National Agreement.

Grievance Data:	Date
Grievance Filed:	August 18, 1980
Step 2 Answer:	October 6, 1980
Step 3 Answer:	November 18, 1980
Step 4 Answer:	February 25, 1981
Appeal to Arbitration:	March 3, 1981
Case Heard:	March 23, 1982
Transcript Received:	April 2, 1982
Briefs Submitted:	May 14, 1982

Statement of the Award: The grievance is granted. The Postal Service should pay a total of five hours at straight time rate to the Distribution Clerk (or Clerks) to be designated by the parties.

BACKGROUND

This grievance protests Management's action in assigning a Mail Handler to Distribution Clerk work, part of the Clerk craft, at the Pittsburgh Bulk Mail Center (BMC) on July 27, 1980. The Union insists this cross-craft assignment was a violation of Article VII, Section 2-B of the 1978 National Agreement. The Postal Service disagrees.

The essential facts are not in dispute. The Pittsburgh BMC handles non-preferential mail, i.e., second, third and fourth class mail. It has two basic tours, Tour 2 which operates seven days a week, 7:00 a.m. to 3:30 p.m., and Tour 3 which operates Monday through Friday, 6:30 p.m. to 3:00 a.m. Because non-preferential mail was backing up on weekends with a large backlog each Monday morning, Management decided in late 1979 to establish a mini-tour on Saturday and Sunday. It placed this mini-tour on Tour 3 hours, 6:30 p.m. to 3:00 a.m.

On Sunday, July 27, 1980, there were nineteen Distribution Clerks (Level 5) and one Mail Handler (Level 4) on this mini-tour. The Distribution Clerks were distributing mail (casing letters and flats, etc.) in the "paper room." The Mail Handler was dumping sacks of mail onto a belt outside the "paper room." There were no other mail processing employees on duty in the BMC at that time. Mail Handlers are represented by the Laborers International Union of North America; Distribution Clerks are represented by the American Postal Workers Union. They are different crafts.

The Mail Handler dumped sacks for the first three hours of this Sunday tour. He then ran out of work. Management reassigned him to work as a Distribution Clerk in the "paper room." He spent five hours on the latter job and he was paid the Distribution Clerk rate (Level 5) for those hours. His reassignment prompted the instant grievance.

Management anticipated this problem before it occurred. It advised the Union in mid-July 1980 that the Mail Handler on the mini-tour might not have sufficient work on Saturday or Sunday and that he would, in such circumstances, be reassigned to Distribution Clerk work. The Union voiced its objection. It suggested various ways in which the Mail Handler could be employed within his own craft for the full eight-hour tour. Its suggestions were not acceptable to Management. Hence, each time a Mail Handler was placed on Distribution Clerk work, a grievance was filed. There were several such grievances, only one of which is before the arbitrator in this case.

The parties agree that the movement of the Mail Handler to the Distribution Clerk job was a cross-craft assignment. The issue is whether this cross-craft assignment was a violation of Article VII, Section 2-B. This provision, along with Article VII, Section 2-A and -C, and Article XXV, read in part:

Article VII - Employee Classifications

"Section 2 - Employment & Work Assignments

A. Normally, work in different crafts, occupational groups or levels will not be combined into one job. However, to provide maximum full-time employment and provide necessary flexibility, management may establish full-time schedule assignments by including work within different crafts or occupational groups after the following sequential actions have been taken...

B. In the event of insufficient work on any particular day or days in a full-time or part-time employee's own scheduled assignment, management may assign the employee to any available work in the same wage level for which the employee is qualified, consistent with the employees' knowledge and experience, in order to maintain the number of work hours of the employees' basic work schedule.

C. During exceptionally heavy workload periods for one occupational group, employees in an occupational group experiencing a light workload period may be assigned to work in the same wage level, commensurate with their capabilities, to the heavy workload area for such time as management determines necessary." (Emphasis added)

Article XXV - Higher Level Assignments

"1. Higher level work is defined as an assignment to a ranked higher level position, whether or not such position has been authorized at the installation.

"2. An employee who is detailed to higher level work shall be paid at the higher level for time actually spent on such job...

"4. Detailing of employees to higher level bargaining unit work in each craft shall be from those eligible, qualified and available employees in each craft in the immediate work area in which the temporarily vacant higher level position exists..." (Emphasis added)

DISCUSSION AND FINDINGS

This is not the first time Article VII, Section 2-B and -C have been construed by an arbitrator from the national panel. Arbitrator Bloch considered these provisions in Case No. H8S-5F-C-8027. His ruling included the following observations:

> "...[Article VII,] Section 2 deals with, among other things, limited circumstances wherein the inherent proscription against crossing craft lines is inapplicable. Paragraph B...specifies that the eventuality of 'insufficient work' on a given occasion will justify the crossing of craft lines for the purpose of providing an employee an eight-hour day. [Paragraph] C...refers primarily to a situation where 'exceptionally heavy work' occurs in another occupational work group...[Paragraph] C... provides that, when such heavy workload occurs, and when there is at the same time a light load in another group, craft lines may be crossed.
>
> "Taken together, these provisions support the inference that Management's right to cross craft lines is substantially limited. The exceptions to the requirement of observing the boundaries arise in situations that are not only unusual but also reasonably unforeseeable. There is no reason to find that the parties intended to give Management discretion to schedule across craft lines merely to maximize efficient personnel usage; this is not what the parties have bargained. That an assignment across craft lines might enable Management to avoid overtime in another group for example, is not, by itself, a contractually sound reason. It must be shown either that there was 'insufficient work' for the classification or, alternatively, that work was 'exceptionally heavy' in one occupational group and light, as well, in another.

"...the reasonable intent of this language [Paragraphs B and C is] ...not to provide means by which the separation of crafts may be routinely ignored but rather to provide the employer with certain limited flexibility in the face of pressing circumstances..." (Emphasis added)

The principle seems clear. Where Management makes a cross-craft assignment, it must justify that assignment under the terms of VII-2-B or VII-2-C. If no such justification is provided, the cross-craft assignment is improper under the "inherent proscription..." in VII-2. The Postal Service does not claim Arbitrator Bloch's interpretation is incorrect. It has not asked me to modify or overrule his award.

However, the statement of this principle does not resolve the present dispute. The Mail Handler who was dumping sacks on the evening mini-tour on July 27, 1980, ran out of work after three hours. There was "insufficient" work for him that day. That fact gave Management the right, under VII-2-B, to "assign the employee [here, the Mail Handler] to any available work in the same wage level for which the employee is qualified..." Plainly, more than one condition must be satisfied before a cross-craft assignment can be validated by VII-2-B. There must be not only (1) "insufficient work" for the employee but also (2) other "available work" (3) which he is "qualified to perform" and (4) which is "in the same wage level."

The first three conditions were met in this case. The fourth is the crux of the problem. The Union stresses that a Mail Handler, a Level 4 position,, was made a Distribution Clerk, a Level 5 position. It believes that this was not an assignment "in the same wage level", that VII-2-B is inapplicable in this situation, and that Management has hence failed to provide justification for this cross-craft assignment. The Postal Service has a quite different view of the evidence. It alleges that the Mail Handler's assignment to Distribution Clerk was "in the same wage level."

This disagreement suggests that the parties have conflicting ideas as to the meaning of the term, "in the same wage level." A careful review of the post-hearing briefs, however, shows no such conflict. The Postal Service's brief (page 7) states that "Article VII, Section 2B... is concerned with lateral, day to day work assignments..." Its brief recognizes that a "lateral" move involves going from one job to another "in the same wage level." That is the Union's reading of VII-2-B as well.

It seems the real disagreement is one of fact. The Postal Service's brief (page 8) states that the Mail Handler in question "was upgraded to Level 5 and was then assigned laterally to work with the [Distribution] Clerks." It maintains, in other words, that the movement here was Level 5 Mail Handler to Level 5 Distribution Clerk. This argument is not at all persuasive. The Mail Handler was in Level 4 before being made a Clerk for the remainder of his July 27, 1980 tour. He was performing what is regarded as Level 4 work, i.e., dumping sacks of mail on the "paper belt." He was not assigned to any Level 5 Mail Handler work. Nor does he appear to have been processed through any kind of procedure which would have made him a Level 5 Mail Handler. Hence, the Postal Service allegation that he was "upgraded to Level 5..." before being assigned to a Clerk job is not borne out by the evidence. This was a bare claim, nothing more. If the Postal Service could "upgrade" an employee within his craft in the manner it says it did in the present case, then the VII-2-B requirement that a cross-craft assignment be "in the same wage level" would be meaningless.

It follows that the protested Mail Handler did not make a "lateral" move on July 27, 1980, that he hence was not assigned to a job "in the same wage level", and that Management has not been able to justify its cross-craft assignment under VII-2-B.[1] That cross-craft assignment, Mail Handler to Distribution Clerk, was improper under the principle stated in Arbitrator Bloch's award.

The Postal Service resists this conclusion on several grounds. It urges that no VII-2-B violation can be found (1) because of the negotiating history behind this provision, (2) because of past practice with respect to cross-craft assignments in the Pittsburgh BMC, (3) because of alleged inconsistencies in the Union's position, and (4) because of the settlement terms of a Jacksonville, Florida grievance involving a similar issue. Each of these contentions is discussed below.

1 Management's rights under Article III are obviously limited by the restrictions imposed by VII-2-B. Management made no attempt to justify its cross-craft assignment under VII-2-C.

Negotiating History

The Postal Service contends the words "in the same wage level" were written into VII-2-B of the 1971 National Agreement because of the Union's concern that employees could otherwise be given a cross-craft assignment to a lower wage level job with a consequent loss of earnings. It notes these words were added before the wage protection provisions of Article XXV were agreed upon. Its argument appears to be that VII-2-B, read in light of this bargaining history, should not be interpreted to prohibit a cross-craft assignment to a higher wage level job, i.e., from Level 4 Mail Handler to Level 5 Distribution Clerk.

The difficulty with this argument is that the parties did not limit the application of VII-2-B to assignments to a lower wage level job. They adopted contract language which permitted only those cross-craft assignments which were "in the same wage level." That formula would, on its face, preclude assignments to lower or higher wage level jobs. The Postal Service acknowledged this reality in its post-hearing brief by describing VII-2-B as being "...concerned with lateral, day to day work assignments..." Given this concession, the Postal Service cannot be allowed to use the 1971 negotiations as a basis for further limitations on the applicability of VII-2-B.[2]

Past Practice

The Postal Service asserts that a practice of cross-craft assignments to higher and lower wage level jobs exists at the Pittsburgh BMC and elsewhere. It believes that VII-2-B, when construed in light of this practice, cannot prohibit the cross-craft assignment made in this case, Mail Handler to Distribution Clerk.

2 : In subsequent negotiations, both sides proposed changes in the language of VII-2-B. The Postal Service sought in 1973 and again in 1978 to delete the words in question, "in the same wage level", from VII-2-B and -C. It did not prevail. The Union sought in 1975 to remove all of VII-2-B and -C from the National Agreement. It did not prevail. None of this history warrants any change in the interpretation I have already given VII-2-B.

This argument improperly lumps together a variety of different assignments. It is true that Management at the Pittsburgh BMC has assigned Clerks to Mail Handler jobs on numerous occasions over the years. Such cross-craft assignments may well have become a practice in this facility. Indeed, the 1978 Local Memorandum of Understanding stated that "all part-time flexible schedule clerks on duty will be reassigned to mailhandler assignments before regular clerks are reassigned to mailhandler duties."[3]

But the dispute here involves a move in the opposite direction, Mail Handler to Clerk. The evidence reveals that Mail Handlers have been assigned to Clerk jobs on only one occasion. That was in 1976 during a United Parcel Service (UPS) strike. A large increase in the Postal Service's business resulted in Clerks working a great deal of overtime and in a need for more Clerk manhours than were available. Management's response was to upgrade some Mail Handlers to Clerk. This single move, even though it concerned several Mail Handlers, can hardly constitute a practice. That is especially true given the fact that this cross-craft assignment was prompted by a truly unique situation.

I find that any cross-craft assignment practice involving Clerks moving to Mail Handler does not control Mail Handlers moving to Clerk. These are separate and distinct matters. Because there is no proven practice for Mail Handlers moving to Clerk, the Postal Service's practice argument must be rejected.

I am not unmindful of the July 1982 National Memorandum of Understanding on this subject. It provides that "in applying...Article...VII..., cross craft assignments of employees ...shall continue as they were made among the six crafts under the 1978 National Agreement." This understanding was executed roughly two years after the instant grievance was filed. It therefore is not relevant to this dispute. Its emphasis on past practice, however, does suggest that practice must always have been a consideration in the application of

3 This Memorandum of Understanding, involving as it does the Clerks' bargaining representative, cannot be binding on the Mail Handlers.

the cross-craft assignment principles in VII-2-B. And the practice should, in my opinion, deal with specific "employees", i.e., the specific craft and specific facility involved in the assignment. That is exactly what I have done in analyzing this dispute.

Union Inconsistency

The Postal Service stresses that the Union has no objection to Clerks moving to Mail Handler under VII-2-B even though that is not a cross-craft assignment "in the same wage level." It says that if the Union has no quarrel with movement to a lower wage level job, there should be no quarrel with movement to a higher wage level job (i.e., Mail Handler to Clerk).

This argument ignores the plain meaning of VII-2-B. As explained earlier, the only permissible assignments under this contract clause are those "in the same wage level." It is hardly surprising that the Union has no quarrel with Clerks moving to Mail Handler. For such an assignment enlarges the Clerks' work opportunity. It is the Mail Handlers who would have reason to protest such a move. Therefore, the Union's apparent inconsistency is nothing more than an expression of self-interest. Its failure to object to Clerks moving to Mail Handler cannot, under these circumstances, become the kind of precedent which would be binding with respect to Mail Handlers moving to Clerk.

Jacksonville Settlement

The Postal Service relies also on the parties' settlement of a Jacksonville, Florida grievance which was pending in national arbitration. It notes that the settlement provided that the movement of Mail Handlers to Clerk in Jacksonville on account of "unscheduled absences, ...unavailability of replacements and heavy parcel post volume...[was] not inconsistent with the National Agreement" requirements on cross-craft assignments. It urges that the Union thereby "accepted as contractually correct the practice of upgrading Mail Handlers to perform Clerk work..."

This argument is not convincing. To begin with, the parties' settlement is dated November 9, 1981. That is more than one year after the instant grievance was filed. There is no indication in the settlement that the parties meant to

apply its terms retroactively to other grievances then pending arbitration.[4] More important, the settlement was expressly "based on the fact circumstances of this particular [Jacksonville] case..." And Management agreed that it "will only utilize this procedure in an emergency situation in order to maintain the efficiency of operations..." There was certainly no "emergency situation" in the Pittsburgh BMC on July 27, 1980, when the Mail Handler was moved to Distribution Clerk for five hours. Thus, the Jacksonville settlement is clearly distinguishable from the facts of the present case.

* * * *

For these reasons, my ruling is that Management's action in assigning a Mail Handler to Distribution Clerk on July 27, 1980, in the Pittsburgh BMC was a violation of Article VII, Section 2. In view of this ruling, the parties' arguments regarding Article XXV need not be answered. The Postal Service, in any event, has not invoked XXV here to justify the Mail Handler's cross-craft assignment to Clerk.

As for the remedy, Management did not work any of the Distribution Clerks overtime on July 27, 1980. Even had the Mail Handler remained on his regular job for the full tour, Management would not have called in any Clerk for overtime in the "paper room." Overtime was simply not needed. Overtime pay would not be a proper remedy. However, the cross-craft assignment of this Mail Handler was a violation of the National Agreement and he did perform work which should have been performed by Distribution Clerks. The latter were injured by the violation and there is no way for them to get that work back. Accordingly, the appropriate remedy is to pay five hours at straight time rate to one or more Clerks to be designated by the parties.

AWARD

The grievance is granted. The Postal Service should pay a total of five hours at straight time rate to the Distribution Clerk (or Clerks) to be designated by the parties.

Richard Mittenthal, Arbitrator

4 The instant grievance was appealed to arbitration on March 3, 1981.

Robert W. Foster 10/17/84 Non
Art. 7 & 8 - Crossing Crafts & OT Assign
AIRS #4063

IN THE MATTER OF THE ARBITRATION BETWEEN	)	OPINION AND AWARD
United States Postal Service Fort Myers, Florida	)	S1C-3W-C-17074 Class Action
Employer	)	
-and-	)	
American Postal Workers Union	)	
Union	)	

ATTACHMENT # 5

* *

Before:

Robert W. Foster, Arbitrator

APPEARANCES

For the Employer:

Walter Flanagan, Regional Labor Relations Specialist

For the Union:

R.J. Erskine, National Vice President

* *

PRELIMINARY STATEMENT

The undersigned was appointed to arbitrate a dispute between the United States Postal Service (Employer) and the National Association of Letter Carriers (Union) arising out of a class action grievance pursued by the Union to this arbitration proceeding according to the National Agreement between the parties. A hearing was held on July 27, 1984 in Fort Myers, Florida, attended by the Grievant and the above-named representatives of the parties who were accorded full and equal opportunity to present evidence and arguments. Both parties elected to file post-hearing briefs which were received by September 17, 1984, thereby closing the record and bringing this matter before the arbitrator to render a final decision according to the terms of the National Agreement.

ISSUE

Whether the Employer violated the National Agreement by assigning part-time flexible Letter Carriers to Clerk Craft work while not utilizing clerk craft employees who were on the Overtime Desired List. If so, what is the appropriate remedy?

PERTINENT CONTRACT PROVISIONS

ARTICLE 7--EMPLOYEE CLASSIFICATIONS

Section 2. Employment and Work Assignments

A. Normally, work in different crafts, occupational groups or levels will not be combined into one job. However, to provide maximum full-time employment and provide necessary flexibility, management may establish full-time schedule assignments by including work within different crafts or occupational groups after the following sequential actions have been taken.

1. All available work within each separate craft by tour has been combined.

2. Work of different crafts in the same wage level by tour has been combined.

The appropriate representatives of the affected Unions will be informed in advance of the reasons for establishing the combination full-time assignments within different crafts in accordance with this Article.

B. In the event of insufficient work on any particular day or days in a full-time or part-time employee's own scheduled assignment, management may assign the employee to any available work in the same wage level for which the employee is qualified, consistent with the employees' knowledge and experience, in order to maintain the number of work hours of the employees' basic work schedule.

C. During exceptionally heavy workload periods for one occupational group, employees in an occupational group experiencing a light workload period may be assigned to work in the same wage level, commensurate with their capabilities, to the heavy workload area for such time as management determines necessary.

ARTICLE 8—HOURS OF WORK

Section 5. Overtime Assignments

When needed, overtime work for regular full-time employees shall be scheduled among qualified employees doing similar work in the work location where the employees regularly work in accordance with the following:

A. Two weeks prior to the start of each calendar quarter, full-time regular employees desiring to work overtime during that quarter shall place their names on an "Overtime Desired" list.

B. Lists will be established by craft, section, or tour in accordance with Article 30, Local Implementation.

C.1.a Except in the letter carrier craft, when during the quarter the need for overtime arises, employees with the necessary skills having listed their names will be selected in order of their seniority on a rotating basis.

F. Excluding December, only in an emergency situation will a full-time regular employee be required to work over ten (10) hours in a day of six (6) days in a week. In addition, no full-time regular employee will be required to work overtime on more than five (5) consecutive days a week.

ARTICLE 37--CLERK CRAFT

F. Results of Posting

2. The successful bidder must be placed in the new assignment within 21 days except in the month of December. The local agreement may set a shorter period.

STATEMENT OF THE CASE

This Grievance alleges that the Employer violated the National Agreement by utilizing carriers in the clerk craft while "there is not insufficient work in the carrier craft, as in Article 7.2(B)." The requested remedy is that employees on the Overtime Desired List who did not work eleven and one half hours on the days in question be compensated for missing opportunities. The Grievance was denied on the ground that management was within its rights under Article 7, Section 2(A) and (B).

The parties stipulated, as established by Union-produced schedules and time cards, that on December 6, 7 and 8, 1982, part-time flexible letter carriers were utilized in the clerk craft at straight-time pay while some clerk craft employees who were on the Overtime Desired List were not scheduled for overtime. The parties stipulated to the obvious fact that there was an unusually heavy volume of mail during this Christmas season.

This was emphasized by a Union witness who told of extra trucks coming in, trays of mail piled by carrier cases, and both clerks and carriers working overtime in their respective crafts. It was also agreed that there had been a practice in the Fort Myers office to use part-time flexible carriers in the clerk craft during the Christmas rush in December and that employees are not normally granted annual leave during this period.

The job description of carrier craft employees was received in evidence that included the statement: "Substitute city carriers may be assigned to perform clerical duties and may be required to pass examinations on schemes of city primary distribution."

DISCUSSION AND OPINION

The answer to the issue raised by this Grievance begins with an interpretation of the relevant contract language and ends with an analysis of the factual circumstances under which management made the disputed assignments to PTF carriers.

A careful reading of Article 7, Section 2 reflects a general contractual limitation on the right of management to assign employees to work across craft lines. As indicated by the prefatory word "normally," followed by the enumerated exceptions to the restriction, it is evident that the contracting parties intended something less than a fixed, rigid rule by granting to management a degree of flexibility when the prescribed conditions of Paragraphs B and C are met. Thus, as recognized by other arbitrators who have dealt with this question, management's right to cross craft lines is limited to a showing of either "insufficient work" for the classification or that work was "exceptionally heavy" in one occupational group and light in the other.

Likewise recognized by other arbitrators, the clear implication is that the qualifying conditions be unusual and reasonably unforeseeable. Moreover,

once the parties through the bargaining process delineated the agreed upon conditions under which management could cross craft lines, the arbitrator is without authority to grant management a greater degree of discretion in order to maximize efficiency in the allocation of work assignments.

These principles, articulated by arbitrator Block in Case No. A8-W-0656, are in no way diminished by arbitrator Mittenthal in M8-W-0027 and M8-E-0032 cited by the Employer. Those cases dealt solely with the question of whether Article 8, Section 5 creates an order of preference in the assignment of overtime. In holding that Article 8 describes how overtime will be distributed when full-time regulars are chosen to perform such overtime, and does not provide for an order of preference for full-time carriers on the Overtime Desired List over part-time flexible carriers, that case did not address the matter dealt with here of crossing craft lines as restricted by Article 7, Section 2. The only relevancy of Article 8, Section 5 to this case is that an improper cross assignment of PTF carriers to clerk craft work would give rise to a cause of complaint on the part of the clerks who had signed the Overtime Desired List and were not assigned to the available work of their craft that was performed by employees in the carrier craft.

Coming to the application of the evidence in this case to these contract standards set out above, it is true that the part-time flexibles were assigned to "available work in the same wage level for which the employee is qualified." But that is only a part of the total conditions under which the crossings of craft lines is permitted. Once it was shown that there was such a crossing of craft lines, management must demonstrate that this action was justified by all of the conditions set out in either Paragraph B or C of Article 7, Section 2. While the Employer has suggested that the heavy Christmas workload during the period in question resulted

in a shortage of vehicles used in carrying the mail, this alone does not establish that there was insufficient work in the carrier craft to be performed by PTF carriers as required by Paragraph B. Indeed, the evidence regarding this heavy workload and use of overtime in the clerk and carrier crafts indicate that there was an abundance of work in both crafts. As indicated above, the fact that management considered the clerk craft work to have had a higher priority in the interest of efficiency and the avoidance of curtailing the mail does not satisfy the condition that there was insufficient work in the carrier craft to be performed by PTFs.

By the same token, while it is true that the workload was "extremely heavy" during the period in question, the carrier craft was not "experiencing a light workload" that would have left the PTFs unemployed in their craft as required by Section 2(C). Moreover, this heavy workload in early December was by no means unusual or unforeseeable to the Postal Service.

The evidence of prior practice was uncertain as to the circumstances under which the Employer had utilized PTF carriers in the clerk craft during the Christmas rush. But, in any event, even a pattern of past practice cannot serve to alter the clear and unambiguous contract language of Article 7, Section 2 that limits the crossing of crafts to the conditions specified in the National Agreement.

And finally, I can find no significance in the absence of any reference in the 1975 Resolution reached by the Unions and the Postal Service at the national level to crossing of crafts of PTF employees. That document dealt with the improper passing over of employees on the Overtime Desired List, while this case turns on the application of Article 7, Section 2 and the exceptions stated therein.

Management's action in assigning PTF carriers to clerk craft work was undoubtedly motivated by the desire to avoid overtime payment to the clerks

while qualified PTFs were available to perform the work on straight-time. But the agreed-upon exception to the crossing of craft lines does not include such an economic objective as a justification for the otherwise prohibited assignment. Having concluded that neither of the two exceptions to the general rule prohibiting cross craft assignments under Article 7, Section 2 were present when the PTF carriers were assigned clerk craft work, it must be concluded that the assignments were improper and detrimental to those clerk craft employees on the Overtime Desired List who were available to perform the work on overtime.

There remains the question of the appropriate remedy to be fashioned by the arbitrator. While the Employer points out that no clerk craft employee was identified by the Union as being adversely affected on the dates in question, the Union did establish that there were some clerks on the Overtime Desired List who were not called in to work the maximum allowable overtime hours during the period when PTF carriers were assigned to clerk craft duties. It is these aggrieved clerks who were adversely affected by the improper assignment who must be made whole by payment at the overtime rate for the hours worked by the carriers in their craft on December 6, 7 and 8, 1982. That payment shall be divided equally among all of the clerks on the Overtime Desired List who were available for overtime assignment to this work. At the suggestion of the parties, the arbitrator retains jurisdiction to assist the parties should they encounter difficulty or disagreement in the implementation of this award.

AWARD

After careful consideration of the evidence and arguments of the parties, and based on the reasons set out above, the award is that the employer violated the National Agreement by assigning part-time flexible letter carriers to clerk craft work while not utilizing clerk craft employees who were on the

Overtime Desired List. The remedy is that the adversely affected clerks who had signed the Overtime Desired List and were available for the overtime assignment of this work shall be paid in equal amounts at the overtime rate for the hours of clerk craft work performed by the PTF carriers on December 6, 7 and 8, 1982.

Accordingly, this Grievance is sustained.

Robert W. Foster

Robert W. Foster

October 17, 1984

Columbia, South Carolina

ATTACHMENT # 6

REGULAR ARBITRATION PANEL
WESTERN REGION

In the Matter of Arbitration	CASE NO: W7C-5F-C 27965
Between	GRIEVANT: LOCAL
UNITED STATES POSTAL SERVICE, LAS VEGAS, NEVADA	DATE OF HEARING: 09/24/93
And	HEARING LOCATION: LAS VEGAS, NEVADA
AMERICAN POSTAL WORKERS UNION, AFL-CIO	ARBITRATOR'S DECISION AND AWARD

BEFORE: CLAUDE D. AMES, ARBITRATOR

APPEARANCES:

For the Employer:
James C. Brown
Senior Labor Relations Representative
1001 E. Sunset Road
Las Vegas, NV 89199

For the Union:
Billy C. Harrell
President, Las Vegas Area Local
P. O. Box 93535
Las Vegas, NV 89193

AWARD: The Postal Service violated Article 7 of the National Agreement when it assigned Letter Carrier Lori Boscarino to perform clerk craft duties on 09/07-22/90. The senior qualified clerk, as determined by the APWU, shall be paid straight time for the hours worked by the carrier, including time and a half for any overtime work. The Union's grievance is sustained.

DATE OF AWARD: October 22, 1993

Claude D. Ames

CLAUDE D. AMES, Arbitrator

I.

INTRODUCTION

This arbitration proceeding came on regularly for hearing pursuant to the current National Agreement between the parties, UNITED STATES POSTAL SERVICE (hereinafter "Employer" or "Agency") and AMERICAN POSTAL WORKERS UNION, LAS VEGAS AREA LOCAL (hereinafter "Union"). Western Regional Panel Member Claude D. Ames was selected to hear the above-referenced grievance. A hearing was held on September 23, 1993, in a conference room at the Las Vegas General Mail Facility (GMF), located at 1001 E. Sunset Road, Las Vegas, NV. Mr. James C. Brown, Senior Labor Relations Representative, appeared on behalf of the United States Postal Service. Mr. Billy C. Harrell, President, Las Vegas Area Local, represented the Local (hereinafter "Grievant") and the American Postal Workers Union.

The Union alleges that Management violated Article 7 of the National Agreement when it temporarily assigned a letter carrier from the Paradise Valley Station to AIS while working on a task force for the class system. The Union maintains that the duties performed by the letter carrier during the period in question were clerk craft duties which could have been performed by a designated clerk. Although the Union recognizes the right of Management to assign the work force as needed and required, it contends that the assignment of this letter carrier was inconsistent with the parties' Collective Bargaining Agreement. The Agency maintains that the duties performed by the carrier were not on any clerk bid. Further, that the class system was a new program to the Postal Service and does

not have a history of any craft performing the task. The Agency relies on Article 3 of the National Agreement for its right to assign employees to perform duties which have not been designated to a specific craft. The Agency maintains that the Union's grievance should be denied.

The arbitration hearing proceeded in an orderly manner and the parties were given a full and fair opportunity for the examination and cross-examination of witnesses, production of documents and arguments. All witnesses appearing for examination were duly sworn under oath by the Arbitrator. The parties stipulated that the matter was properly before the Arbitrator with no issues of procedural or substantive arbitrability to be resolved. The parties chose to present oral closing arguments in lieu of written post-hearing briefs. The Arbitrator officially closed the hearing after receiving the parties' oral closing arguments on September 24, 1993.

II.

STATEMENT OF ISSUE

The parties mutually stipulated that the issue for resolution before the Arbitrator is as follows:

> Whether the Postal Service violated Article 7 of the National Agreement when it assigned duties to Letter Carrier Lori Boscarino on 09/07-22/90.
>
> If so, what is the appropriate remedy?

III.

RELEVANT CONTRACT PROVISIONS AND REGULATIONS

ARTICLE 3 - MANAGEMENT RIGHTS

The Employer shall have the exclusive right, subject to the provisions of this Agreement and consistent with applicable laws and regulations:

A. To direct employees of the Employer in the performance of official duties;

B. To hire, promote, transfer, assign, and retain employees in positions within the Postal Service and to suspend, demote, discharge, or take other disciplinary action against such employees;

C. To maintain the efficiency of the operations entrusted to it;

D. To determine the methods, means, and personnel by which such operations are to be conducted.

F. To take whatever actions may be necessary to carry out its mission in emergency situations, i.e., an unforeseen circumstance or a combination of circumstances which calls for immediate action in a situation which is not expected to be of a recurring nature.

ARTICLE 7 - EMPLOYEE CLASSIFICATIONS

Section 2. Employment and Work Assignments

A. Normally, work in different crafts, occupational groups or levels will not be combined into one job. However, to provide maximum full-time employment and provide necessary flexibility, management may establish full-time schedule assignments by including work within different crafts or occupational groups after the following sequential actions have been taken:

1. All available work within each separate craft by tour has been combined.

2. Work of different crafts in the same wage level by tour has been combined.

IV.

STATEMENT OF FACTS

On or about September 7-22, 1990, Letter Carrier Lori Boscarino was assigned by Management to the A.I.S. office to perform clerk craft duties requiring the input of data. Ms. Boscarino was working on the new class system which was being implemented in the Las Vegas area at the Paradise Valley Station. Among her duties was the upgrading of customer names and addresses on labels and cases for the new routes in which the class system would be implemented. Along with Ms. Boscarino, Clerk Craft employee Lelia Arthur also assisted in taking the information received by Ms. Boscarino and inputting it into the computer for the class system program. Ms. Arthur had received prior training from A.I.S. officials from the Phoenix GMF who were familiar with the new class system in July 1990. Both she and Ms. Boscarino worked on the implementation and updating of the new class system at the A.I.S. office. On or about September 7-22, 1990, Ms. Arthur took annual leave and was off work. The Agency assigned the job task of inputting the class system data into the computer to Ms. Boscarino. Although the Union alleged that Management informed Ms. Boscarino to keep the assignment "quiet," there is nothing in the testimony of any of the witnesses appearing at the hearing to substantiate this charge. Ms. Boscarino testified that during the period in question, she spent one half of her day inputting data and the other half doing other duties. She does not recall whether or not she used the A.I.S. code; however, the clock rings indicate that the A.I.S. code was utilized

by this carrier employee. However, she does admit that she was not performing carrier duties while in the A.I.S. office.

The Agency maintains that since the new class system has not been designated to an appropriate craft, it did not violate the parties' Agreement by allowing this carrier to input data during the annual leave of Lelia Arthur. The Agency further maintains that Ms. Boscarino was a member of a task force which was responsible for implementing the new class system within the local area. She was the employee most familiar with the entry of this data as opposed to a clerk craft employee with no prior knowledge.

The Union became aware of the assignment after it was notified by Venise Mainwahl, a clerk at the Paradise Valley Station, who observed Ms. Boscarino performing clerk craft work. Ms. Mainwahl expressed concerned that the assignment of this letter carrier across craft lines was being done in violation of the parties' National Agreement. According to the testimony of Ms. Mainwahl, clerk craft employees were available to enter the data into the computer for the labelling systems. Ms. Mainwahl testified that she was informed that Lee Curtis, Postmaster at the Paradise Valley Station, told Ms. Boscarino to "keep quiet" about the assignment. According to Ms. Mainwahl, the inference was that the Postmaster knew the carrier assignment was in violation of a National Agreement.

The parties, after discussing the grievance and trying to resolve the dispute at Steps 2 and 3 of the grievance procedure, have now mutually stipulated that the matter is properly before the Arbitrator for final and binding resolution.

V.

POSITION OF PARTIES

Union's Position:

Crossing of craft lines is allowed in limited circumstances as outlined in Article 7.2 of the Collective Bargaining Agreement. The Union maintains, however, that done of these circumstances as stated in Article 7.2 existed at the time Management assigned Letter Carrier Boscarino to perform clerk craft duties. The duties performed by this letter carrier has been historically performed by clerk craft employees. The inputting of data is a duty properly assigned to the clerk craft and not to employees who are members of the letter carrier craft. Ms. Boscarino did clerk work while at the A.I.S. office. She has not denied that the duties performed were clerk craft work. The labelling of cases for the new class system and inputting of entry data was work which was performed by Ms. Arthur prior to her annual leave. The Union maintains that there were no emergency circumstances which would require Management to cross craft lines in this situation. As remedy, the Union is requesting that the senior clerk be paid at the overtime rate for all time in which the letter carrier performed clerk craft work.

Employer's Position:

The Agency maintains that in an effort to update the carrier craft for greater efficiency of operation, it used the craft most knowledgeable with the work to assist in establishing the class labelling system. This new labelling system required that the carrier craft be used as opposed to the clerk craft who has no experience with the program.

According to the Agency, Article 3 (Management Rights) of the National Agreement allows the Agency to utilize its work force in the most efficient manner. The Agency maintains that the use of Ms. Boscarino to continue the task of labelling and inputting data on the class system not only was the most efficient use of this employee, but assisted in the overall operation of getting this task implemented.

The Agency further maintains that the class program is a new program to the Postal Service and does not have a history of any craft performing the task which was performed by Ms. Boscarino. During her week at A.I.S., Ms. Boscarino performed no duties which crossed into the clerk craft or infringed upon any work performed by clerk bids. The Agency has also submitted an arbitration award (Case No. W4C-5F-C 34287) by Arbitrator Robert M. Leventhal. In that case, the arbitrator found that the Postal Service did not violate the National Agreement when a carrier was assigned to certain duties in the Express Mail Office. According to the Agency, no violation occurred in the assignment of a letter carrier to the A.I.S. office to assist in the implementation of the new class system.

According to the Agency, the new class system superseded craft lines because the task force was faced with a deadline. Ms. Boscarino was a key member of the task force and was instrumental in keeping the project on track while Ms. Arthur was on annual leave. The Agency request that the Union's grievance be denied.

VI.

DISCUSSION

In determining whether the Agency violated the National Agreement by assigning a letter carrier employee to perform clerk craft work, it is essential to examine specifically what type of duties were performed by the carrier. The Agency maintains that no violation occurred because the work performed by the letter carrier had not been previously assigned or delegated to any particular craft because the class system being implemented was new and had not officially come on line. In fact, a task force had been assigned the responsibility of implementing the new system in which Ms. Boscarino was a member along with Lelia Arthur, the clerk who inputted the data. There is no dispute within the evidence record that prior to the annual leave of Ms. Arthur, all inputting of data into the computer was a clerk function which she performed. The other class system duties of preparing and upgrading the labelling system and cases were duties primarily performed by Ms. Boscarino. As a carrier with prior citywide knowledge of the labelling and case routing system, she was instrumental in organizing the new system. The testimony at the hearing was insufficient to establish whether prior to the annual leave of Ms. Arthur if Ms. Boscarino also assisted in the inputting of data.

The Agency maintains that it did not violate the Agreement by crossing craft lines in assigning Ms. Boscarino to input the data which had normally been performed by the clerk craft employee. According to the Agency, Ms. Boscarino, as a member of the task force who was quite familiar with the entire operation, was the most efficient and logical

person to input class system data into the computer during the absence of Ms. Arthur. In support of this position, the Agency relies on Article 3 of the National Agreement under its Management Rights Clause. According to the Agency, it has the exclusive right to determine the most efficient manner in which to utilize its work force. The Agency further argues that the task force was working under a deadline in which it had to fully implement the new class labelling system by the end of Fiscal Year 1990.

After a careful and thorough review of the evidence record, the Arbitrator can find no basis in which to sustain the Agency's position that it did not violate the National Agreement by assigning a carrier craft employee to perform clerk craft work. Notwithstanding the Agency's argument that no specific craft had been designated to perform class system work, there is no evidence to support this position. To the contrary, the evidence indicate that the clerk craft, either expressed or implied, was the designated craft to perform traditional duties of data collection and entry, as performed by Ms. Arthur. Further, the fact that Ms. Arthur was trained by Phoenix A.I.S. personnel to assist in implementing the new class system program is further support for the Union's position that the duties performed were consistent with established data collection and entry duties of the craft. The Agency presented no evidence that the carrier craft was similarly trained in the same manner as Ms. Arthur in the inputting of data for the new class system. If such evidence were to exist, it would clearly show that the two crafts were on equal footing as it relates to duty assignments for this new class system. In the absence of such clear evidence, the appropriate craft to perform Ms. Arthur's duties and fill her vacancy during her annual leave was the clerk craft, and not an employee from the carrier craft. Although there is

insufficient evidence to support the Union's argument that Management informed Ms. Boscarino to "keep quiet" regarding her assignment to input data during the absence of Ms. Arthur, the incident is viewed as an acknowledgement by Management that it was acting improperly, or at least questionable, in the utilization of this carrier employee. The Agency's position is further weakened by the fact that the duties performed by Ms. Boscarino during Ms. Arthur's annual leave were basically clerk craft duties. It is well established under the parties' National Agreement and key clerk job descriptions as submitted by the Union, that the conversion and entry of data is performed by the clerk craft. In the instant case, the Arbitrator can find nothing in the evidence record that would indicate an emergency situation which would allow the Agency to unilaterally override the clear provisions of the contract. The case presented before the Arbitrator is quite distinguishable from the decision of Arbitrator Leventhal which the Agency presents in support of its position. In the Leventhal decision, the carrier did not perform clerk craft work. Although the carrier did sit at a terminal and input data, the data he inputted was for test purposes only and had already been processed. In the instant case, the data inputted by carrier Boscarino had not been previously processed and was not for test purposes. It served an essential purpose in the implementation of the class system. Accordingly, the Union's grievance is sustained.

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DECISION

The Agency violated the National Agreement by assigning Letter Carrier Lori Boscarino to input data at the Paradise Valley Station. The assignment was across craft lines where the carrier performed clerk craft work. In the absence of any exigent circumstances, which would allow Management to unilaterally assign employees across crafts to perform duties, the Agency's actions were without justification or excuse, and a clear violation of the Agreement. Further, there was no evidence of non-availability of other clerk craft employees to perform the duties done by this letter carrier, or their lack of competency to do so. The Arbitrator finds that a violation did occur in the assignment. Therefore, based upon the reasons as stated above, the Union's grievance is sustained.

AWARD

The Postal Service violated Article 7 of the National Agreement when it assigned Letter Carrier Lori Boscarino to perform clerk craft duties on 09/07-22/90. The senior qualified clerk, as determined by the APWU, shall be paid straight time for the hours worked by the carrier, including time and a half for any overtime work. The Union's grievance is sustained.

Dated: October 22, 1993

Claude D. Ames

CLAUDE D. AMES, Arbitrator

ATTACHMENT # 7

REGULAR ARBITRATION PANEL
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In the Matter of Arbitration	
between:	GRIEVANT: Class Action
UNITED STATES POSTAL SERVICE	POST OFFICE: Denver, CO, BMC
and	CASE NOS.: COC-4U-C 5444 COC-4U-C 5089 COC-4U-C 5807 COC-4U-C 5812
AMERICAN POSTAL WORKERS UNION	

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BEFORE: Lamont E. Stallworth, Labor Arbitrator

APPEARANCES:

For the U.S. Postal Service:	Dan L. Foster Labor Relations Specialist Denver District
For the Union:	Marilyn "Mo" Merow President, Tucson Local Union Representative
Place of Hearing:	Denver BMC
Date of Hearing:	June 30, 1994
Date of Award:	November 17, 1994

AWARD: The Arbitrator concludes that the Service violated the Agreement when it breached the February 4, 1991, GRIP Settlement Agreement and instead gave palletized mail distribution to the Mailhandlers without first maximizing the Overtime Desired List for the Clerk Craft. Accordingly, the Arbitrator concludes that palletized mail distribution work belongs to the Clerk Craft and therefore may not be worked on the Sack Sorter.

The Arbitrator further concludes that the affected Clerk Craft employees on the Overtime Desired List for the period relevant to this dispute be made whole at time and one half for all distribution of 2C and 3C palletized mail by the Mailhandler craft.

The Arbitrator shall retain jurisdiction over the remedial aspect of this dispute for a reasonable period of time, not to exceed sixty (60) days unless otherwise expressly agreed to by the Parties.

Grievance sustained.

Lamont E. Stallworth
Labor Arbitrator

THE ISSUES:

The Parties submitted the following issue(s) to the Arbitrator:

1. Did the Postal Service violate Articles 7, 8, 15 and 19 of the National Agreement? If so, what is the appropriate remedy?

2. Can the Postal Service take palletized bundles of magazines and work them on the Sack Sorter?

RELEVANT CONTRACT PROVISIONS:

ARTICLE 3
MANAGEMENT RIGHTS

The Employer shall have the exclusive right, subject to the provisions of this Agreement and consistent with applicable laws and regulations:

A. To direct employees of the Employer in the performance of official duties;

B. To hire, promote, transfer, assign, and retain employees in positions within the Postal Service and to suspend, demote, discharge, or take other disciplinary action against such employees;

C. To maintain the efficiency of the operations entrusted to it;

D. To determine the methods, means, and personnel by which such operations are to be conducted;

E. To prescribe a uniform dress to be worn by letter carriers and other designated employees; and

F. To take whatever actions may be necessary to carry out its mission in emergency situations, i.e., an unforeseen circumstance or a combination of circumstances which calls for immediate action in a situation which is not expected to be of a recurring nature.

.....

ARTICLE 5
PROHIBITION OF UNILATERAL ACTION

The Employer will not take any actions affecting wages, hours and other terms and conditions of employment as defined in Section 8(d) of the National Labor Relations Act which violate the terms of this Agreement or are otherwise inconsistent with its obligations under law.

ARTICLE 7
EMPLOYEE CLASSIFICATIONS

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Section 2. Employment and Work Assignments

A. Normally, work in different crafts, occupational groups or levels will not be combined into one job. However, to provide maximum full-time employment and provide necessary flexibility, management may establish full-time schedule assignments by including work within different crafts or occupational groups after the following sequential actions have been taken:

1. All available work within each separate craft by tour has been combined.

2. Work of different crafts in the same wage level by tour has been combined.

The appropriate representatives of the affected Unions will be informed in advance of the reasons for establishing the combination full-time assignments within different crafts in accordance with this Article.

B. In the event of insufficient work on any particular day or days in a full-time or part-time employee's own scheduled assignment, management may assign the employee to any available work in the same wage level for which the employee is qualified, consistent with the employee's knowledge and experience, in order to maintain the number of work hours of the employee's basic work schedule.

C. During exceptionally heavy workload periods for one occupational group, employees in an occupational group experiencing a light workload period may be assigned to work in the same wage level, commensurate with their capabilities, to the heavy workload area for such time as management determines necessary.

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ARTICLE 8
HOURS OF WORK

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Section 5. Overtime Assignments

When needed, overtime work for regular full-time employees shall be scheduled among qualified employees doing similar work in the work location where the employees regularly work in accordance with the following:

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F. Excluding December, no full-time regular employee will be required to work overtime on more than four (4) of the employee's five (5) scheduled days in a service week or work over ten (10) hours on a regularly scheduled day, over eight (8) hours on a non-scheduled day, or over six (6) days in a service week.

.....

ARTICLE 15
GRIEVANCE-ARBITRATION PROCEDURE

Section 1. Definition

A grievance is defined as a dispute, difference, disagreement or complaint between the parties related to wages, hours, and conditions of employment. A grievance shall include, but is not limited to, the complaint of an employee or of the Unions which involves the interpretation, application of, or compliance with the provisions of this Agreement or any local Memorandum of Understanding not in conflict with this Agreement.

Section 2. Grievance Procedure - Steps

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Step 2:

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(d) At the meeting the Union representative shall make a full and detailed statement of facts relied upon, contractual provisions involved, and remedy sought. The Union representative may also furnish written statements from witnesses or other individuals. The Employer representative shall also make a full and detailed statement of facts and contractual provisions relied upon. The parties' representatives shall cooperate fully in the effort to develop all necessary facts, including the exchange of copies of all relevant papers or documents in accordance with Article 31. The parties' representatives may mutually agree to jointly

interview witnesses where desirable to assure full development of all facts and contentions. In addition, incases involving discharge either party shall have the right to present no more than two witnesses. Such right shall not preclude the parties from jointly agreeing to interview additional witnesses as provided above.

(e) Any settlement or withdrawal of a grievance in Step 2 shall be in writing or shall be noted on the standard grievance form, but shall not be a precedent for any purpose, unless the parties specifically so agree or develop an agreement to dispose of future similar or related problems.

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Section 4. Arbitration

A. General Provisions

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6. All decisions of an arbitrator will be final and binding. All decisions of arbitrators shall be limited to the terms and provisions of this Agreement, and in no event may the terms and provisions of this Agreement be altered, amended, or modified by an arbitrator. Unless otherwise provided in this Article, all costs, fees, and expenses charged by an arbitrator will be shared equally by the parties.

ARTICLE 19
HANDBOOKS AND MANUALS

Those parts of all handbooks, manuals and published regulations of the Postal Service, that directly relate to wages, hour or working conditions, as they apply to employees covered by this Agreement, shall contain nothing that conflicts with this Agreement, and shall be continued in effect except that the Employer shall have the right to make changes that are not inconsistent with this Agreement and that are fair, reasonable, and equitable. This includes, but is not limited to, the Postal Service Manual and the F-21, Timekeeper's Instructions.

Notice of such proposed changes that directly relate to wages, hours, or working conditions will be furnished to the Unions at the national level at least sixty (60) days prior to issuance. At the request of the Unions, the parties shall meet concerning such changes. If the Unions, after the meeting, believe the proposed changes violate the National Agreement (including this Article), they may then submit the issue to arbitration in accordance with

the arbitration procedure within sixty (60) days after receipt of the notice of proposed change. Copies of those parts of all new handbooks, manuals and regulations that directly relate to wages, hours or working conditions, as they apply to employees covered by this Agreement, shall be furnished the Unions upon issuance.

Article 19 shall apply in that those parts of all handbooks, manuals and published regulations of the Postal Service, which directly relate to wages, hours or working conditions shall apply to transitional employees only to the extent consistent with other rights and characteristics of transitional employees negotiated in this Agreement and otherwise as they apply to the supplemental work force. The Employer shall have the right to make changes to handbooks, manuals and published regulations as they relate to transitional employees pursuant to the same standards and procedures found in Article 19 of this Agreement.

DOMESTIC MAIL MANUAL

645.2 Package Preparation

645.21 Weight and Volume. A package, which is a group of pieces secured together as one unit, must contain a minimum of two pieces and must not exceed 40 pounds in weight.

POSTAL OPERATIONS MANUAL (POM)

440 Non-Preferential Mail - Distribution, Dispatch and Routing Procedures

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442 Third-Class Mail

442.1 Mechanical Distribution. Distribution of third-class mail is performed either manually or by mechanization. Although the majority of third-class mail is distributed manually (see 442.2), management has the obligation to process as much third-class mail with mechanization as is feasible without being detrimental to service standards. Note:

a. Use MPLSM's to sort letter-size third-class mail where feasible.

b. Normally, MPLSM's are used to distribute letter-size third-class only for local SCF or city delivery.

c. SDC's may find it practicable to process machinable state letter-size third-class mail on MPLSM's.

BACKGROUND:

The instant dispute involves four (4) grievances that the Parties agreed to join for hearing, i.e. case numbers COC-4U-C5444, COC-4U-C5089, COC-4U-C5807 and COC-4U-C5812. Each case involves essentially the same issues but occurred on different dates. Joint Exhibit Nos. 2 through 5 are the grievance chain for each respective case. The background and arguments for each case apply to all four grievances.

The Denver Bulk Mail Center is commonly referred to as the Denver BMC. There are two (2) different crafts at work at the Denver BMC, i.e. (1) Mailhandlers and (2) Clerks. These two crafts are represented by different unions. Historically, there have been jurisdictional disputes between the two crafts as to which craft performs certain work. These types of cases are referred to as "RI-399" Disputes and are sent to the RI-399 Dispute Resolution Committee. "RI-399 Disputes" cannot be heard by local parties and may only be adjudicated by the Parties at the National level. The Parties in the instant dispute have agreed that the four instant grievances do not involve an "RI-399 Dispute." Rather, the instant dispute involves a temporary work assignment.

On February 4, 1991, the Parties entered into a Grievance Resolution Improvement Process ("GRIP") settlement. The GRIP Settlement involved the same type of work, i.e. the distribution of 2C and 3C palletized mail. The GRIP settlement reads, in part, as follows:

> The parties agree that all distribution of 2nd and 3rd Class Flat Bundles is to be performed by the Clerk Craft

> in accordance with RI 399. It is further agreed that Mailhandlers may only be utilized for this when the express conditions of Article 7, Section 2 B and C are clearly met; otherwise such use of Mailhandlers will constitute a cross craft violation.

The express language of Article 7, Section 2 B and C reads as follows:

> B. In the event of insufficient work on any particular day or days in a full-time or part-time employee's own scheduled assignment, management may assign the employee to any available work in the same wage level for which the employee is qualified, consistent with the employee's knowledge and experience, in order to maintain the number of work hours of the employee's basic schedule.
>
> C. During exceptionally heavy workload periods for one occupational group, employees in an occupational group experiencing a light workload period may be assigned to work in the same wage level, commensurate with their capabilities, to the heavy workload area for such a time as management determines necessary.

The February 2, 1991, GRIP Settlement Agreement involved the manual distribution of the palletized mail. In the instant grievances, the distribution of palletized mail involves the use of the Sack Sorter machine - a mechanized operation. However, both disputes involve the distribution of palletized mail.

During a twelve (12) day period from approximately November 9, 1991, through November 16, 1991 and November 21 and 22, 1991, the Service ran palletized bundles of mail through the Sack Sorter. Traditionally, the Clerk Craft sorted the palletized mail using the Small Parcel and Bundle Sorter ("SPBS"). Mailhandlers operate the Sack Sorter. Mailhandlers performed work with the palletized mail during the relevant time period by operating the Sack Sorter machine and running the bundles through the Sack Sorter. The Service maintains that it used the Sack Sorter for the palletized

mail because the time-valued mail was backed up and needed to get out. The Union filed the above-referenced grievances protesting that the palletized mail work belonged to the Clerk Craft. Once the work was reassigned to the Clerk Craft after the twelve day period, there was no grievance filed by the Mailhandlers.

During the processing of all four grievances the Union argued that the palletized mail work was strictly Clerk Craft work. The Union contended that the Overtime Desired List for clerks should have been maximized before Mailhandlers were given the palletized mail work. Throughout the grievance process, the Service maintained that the palletized bundles were sorted on the Sack Sorter when mail volume was low on the Sack Sorter. The Service argues that in an attempt to reduce backed up time-valued mail, the Service used the Sack Sorter as a means to get the delayed mail moving. In the Step 3 Appeal dated April 13, 1992, the Service stated that under Domestic Mail Manual regulations, the Service has the right to process bundles across the Sack Sorter machine if they are machinable by being cross strapped and heavy-gauged shrink wrapped. It is the Union's contention that the decision to change the manner in which palletized bundles were distributed was made unilaterally without any communication with the Union Local President, Steve Bertels. When the disputed work shifted temporarily to the Mailhandlers, the Union filed the series of grievances referenced above.

The Parties were not able to resolve the instant dispute and submitted the four joined grievances to arbitration. It is within this factual context that the instant dispute arises.

THE UNION'S POSITION:

The Union contends that the issue is whether the Service violated Articles 7, 8 and 19 of the Collective Bargaining Agreement when they assigned the Mailhandler craft to sort palletized magazine bundles on the Sack Sorter. The Union argues that the distribution of palletized bundle mail (2C and 3C) has historically been assigned to the Clerk Craft and is currently Clerk Craft work. The Union asserts that the Service violated Article 7 when it crossed crafts and assigned the palletized work to the Mailhandlers, and violated Article 8 when it bypassed overtime.

With regard to Article 7, the Union submits that it was undisputed that the February 4, 1991, GRIP Settlement Agreement is an official document signed by the Parties. (Union Exhibit No. 1). The Union contends that the GRIP Settlement makes it clear that all distribution of 2C and 3C bundle work is to be performed by the Clerk Craft, and that Mailhandlers will only be utilized for the work if the express conditions of Article 7, Section 2 B and C are met.

The Union contends that the GRIP Settlement Agreement establishes that distribution of flat 2C and 3C bundles, the work at issue, belongs to the Clerk Craft. The Union further asserts that the Service's argument that job jurisdiction is only gained through the type of operation that is utilized is without merit in light of the GRIP Settlement Agreement. The Union asserts that the GRIP Settlement Agreement does not make a distinction as to what

equipment the work can be performed on but clearly gives the 2C and 3C palletized mail work to the Clerk Craft. The Union also contends that a clear past practice existed regarding the Clerk's distribution of the mail in question. The Union points out that the Mailhandlers did not dispute returning the distribution work back to the Clerks in late November of 1991 because the Mailhandlers agreed that the work was Clerk Craft work.

The Union notes that the Service witnesses testified that van mail had backed up and that the Sack Sorter machine was used to alleviate the back-up. Service witnesses also testified that Mailhandlers performed other work besides operating the Sack Sorter, including unloading vans when there was no work on the Sack Sorter.

The Union contends that Article 7 of the Agreement is explicit that work can only be assigned across craft lines when the work of one occupational group is light. The Union asserts that according to the two managers that the work load in the Mailhandler craft was not light, only work on the Sack Sorter was light. The Union argues that although the managers testified that there was an unusual amount of work, no one stated that there was an attempt to look for work for the Mailhandlers in their own craft. The Union submits that the contract does not specify that the workload must be light in a certain operation, only that a specific occupational group has a light workload. The Union argues that the Service was under an obligation to keep the Sack Sorter (Mailhandlers) Operators gainfully employed within their own craft.

The Union points out that Article 7 also contains a notice requirement which states that appropriate Union representatives will be notified in advance as to the reasons for establishing the combination full-time assignments. The Union contends that no one notified Local Union President Steve Bertels about the cross craft assignments. The Union also contends that there was no mention at the Step 2 level that there was a low mail volume on the Sack Sorter and a heavy influx of palletized mail, even though management witnesses testified that this was the case at the hearing. The Union points out that even at Step 3, management only mentioned the low mail volume on the Sack Sorter and did not mention the heavy volume of palletized mail. The Union contends that the Service's argument about time value mail being delayed was also a new argument at the hearing. The Union submits that the Service offered no documentation to back up their claims, and never shared records with the Union substantiating their claims during the grievance process or at the hearing. Accordingly, the Union states that the testimony regarding backed-up time-valued mail should be given no weight.

The Union contends that the job description for the Sack Sorting Machine Operators shows that the Sack Sorter is operated by Mailhandlers and they read the labels for zip codes as sacks are fed on a conveyor. (Joint Exhibit No. 6). The Union asserts that this job description says nothing about the distribution of 2C and 3C bundled mail.

With respect to Article 8, the Union contends that the Service violated the Agreement when it bypassed clerks for overtime and

instead used Mailhandlers on the Sack Sorter. The Union submits that testimony by Union Steward George Prusak and the pay period sheets for the relevant time period show that clerks did not work their maximum amount of overtime under Article 8 before the bundle work was given to the Mailhandlers to process through the Sack Sorter. (Union Exhibit Nos. 3, 4 and 5). The Union also submits that Local Union President Steve Bertels testified that as a KP-12 he had regularly sorted mail manually. Bertels testified that once that position was abolished, he still distributed the mail manually as part of his allied duties as an SPBS operator during his rotation off the SPBS. The Union notes that there were more keyers on the SPBS than positions on the SPBS and thus, employees worked a regular rotation of the SPBS.

The Union contends that both Union and Management witnesses testified that Management must maximize the overtime desired list to at least twelve (12) hours per day and sixty (60) hours per week before mandating someone not on the list to work overtime. The Union asserts that the witnesses also testified that once clerks are maximized on the list, Management can mandate clerks not on the list to work overtime. The Union submits that the pay period sheets clearly show that SPBS operators, the clerks, did not maximize overtime before the Mailhandlers were given the bundle work to put through the Sack Sorter. (Union Exhibit Nos. 3, 4 and 5). The Union contends that Management witnesses stated that no scheme knowledge was involved in the sorting of the palletized mail. The Union argues that there was no testimony indicating that

there were not any clerks available to work the overtime. Rather, the Union asserts that Management witness Flood stated he could not use clerks because they were all being utilized at the time. Management witness Moser stated that he did not know that he had not used the clerk OTDL and/or maximized the list and mandated work for those not on the list. The Union notes that both witnesses stated that they had the right to maximize the list and mandate off the list prior to assigning the work across craft lines.

The Union asserts that it has made its prima facie case that the palletized mail work belongs to the Clerk Craft in light of past practice and the GRIP Settlement Agreement. The Union submits that the Service's new argument that the mail in question was time-valued and backed-up was not supported by records or documentation of any kind. The Union submits that the burden of proof should now shift to the Service and that this new evidence should not be given any weight as it was not provided to the Union during the grievance process under Article 15.2 (d) of the Parties' Agreement. The Union argues that it has been "blindsided" with this new time-valued mail argument and that it was not raised in any way in the moving papers in the grievance process. The Union claims that it was not made aware of the mail backup until Step 3 of the grievance process, but did argue that overtime in the Clerk Craft should be utilized prior to assigning the work in the Mailhandler Craft.

With respect to Article 19, Handbooks and Manuals, the Union submits that the Service entered into evidence Service Exhibit Nos. 2 and 3 which give a mechanical distribution description for third

class mail (Section 442.1 of Service Exhibit No. 2) and Plan Failure information, respectively. The Union argues that this is also new argument and was never shared with the Union before the hearing. Accordingly, the Union submits that any Plan Failure argument that the Service did not meet its service commitments should be disregarded. The Union contends that the Service has offered nothing to demonstrate that indeed there was a back-up of the mail in question; that there was any critical time value or dispatch window; or that they were unable to process the mail in question by the clerks.

As a remedy, the Union requests that the above-referenced grievances be sustained and make the overtime desired list for the fourth quarter of 1991 whole for all distribution of 2C and 3C palletized mail by the Mailhandler craft at the rate of time and one-half. The Union realizes that the remedy may have to be remanded back to the Parties to determine the Clerk Craft employees on the OTDL at the time, and thus requests that the Arbitrator retain jurisdiction over this matter until such time the remedy is awarded.

THE SERVICE'S POSITION:

The Service contends that the Union failed to meet its burden of proof in the instant grievances. The Service contends that the Union failed to prove that a violation of the Agreement took place. Specifically, the Service asserts that the Union did not prove that the clerks have exclusive rights to process the palletized mail in

question under the Agreement. Rather, it is the Service's position that under Article 3, the Management's Rights clause, that the Service has the right and obligation to maintain efficient service. Under Article 3, the Service asserts that it has the right to determine what kind of mail postal employees will process and in what manner they will process the mail.

The Service notes that at issue is whether it may use the Sack Sorter to process [distribute] palletized bundles of mail. The Service asserts that Mailhandlers normally work the Sack Sorter. When the Service used the Sack Sorter for palletized mail, the Service argues that the Mailhandlers acted no differently than when they sorted bundles of magazines. The Service asserts that the mail was not sorted the same as in the clerk operations, but was instead sorted by regular Mailhandler operations, i.e. by three digit zip code. The Service asserts that Management has the right to work mail in the sack sorting operation which it deems appropriate based upon plant needs and service standards. The Service notes that even under RI-399 standards, that the assignment of primary crafts is not exclusive; it merely designates which craft normally performs that type of work.

The Service asserts that the Union's case is without foundation or evidence. The Service argues that the Union did not show that the palletized mail must be worked either in the "horseshoe" operation or on the Small Parcel Palletized Bundle ("SPBS") by the Clerks. The Service contends that the only thing the Union proved was that the clerks normally work that type of mail.

The Service contends that the Mailhandlers worked the palletized mail during the relevant time period because Management was extremely backlogged with late mail and had to take action to process it. The Service argues that this was a one-time situation dictated by the need to get an over-abundance of mail out in a timely fashion. The Service asserts that this is not a situation where Management engaged in arbitrary or capricious conduct.

The Service contends that the Union is required to prove every aspect of their case, to show that a violation of the Agreement occurred and that a remedy is appropriate. With regard to the Union's argument that they have exclusive rights to work a certain type of mail, the Service asserts that crafts do not have inherent rights or exclusive possession to any certain classification of the mails. Rather, it is the Service's position that the craft rights lie in the type of operation performed. As examples, the Service cites various craft operations, e.g. the Motor Vehicle craft does not have rights to first class mail - they have the right to transport mail and to repair vehicles; Mailhandlers do not have exclusive rights to handle any class of mail - they have rights to move the mail and perform certain sorting and distribution operations; and Clerk craft do not have jurisdiction over different classes of mail - they have jurisdiction over SPBS operations and manual units included in that section.

With regard to specific contract violations alleged by the Union, the Service further contends that the Union did not prove

any contract violation. With respect to Article 5, the Service asserts that there was no contract violation because the Service did not unilaterally change the clerks' wages, hours or working conditions. The Service points out that normally Article 5 contract violations involve breaks, wash-up times and the like.

With respect to Article 7, the Service contends that the instant grievances do not involve the crossing of crafts whereby Mailhandlers were working in clerk operations. The Service argues that no Mailhandlers worked on the SPBS or in the "horseshoe" operation. Accordingly, the Service contends that no violation of Article 7 occurred. The Service argues that it stands unrebutted that additional manual "horseshoe" operations were set up for clerks to work but the Service ran out of floor space to set up any more. The Service asserts that it even tried to run the mail through the parcel sorting machine - a clerk operation - but that operation did not work because it damaged the mail.

The Service contends that even assuming arguendo that Section 7 applies to the instant grievances, Management met the requirements of Article 7.2. The Service argues that it had an exceptionally heavy workload for one occupational group (i.e. the Clerks) and had experienced a light workload for the Mailhandlers. The Service argues that there were delayed vans of mail, including time valued mail, in the yard and delayed mail in the plant, the Clerks were busy working their operations and were not available to work any more mail than they already were working. The Service asserts that the Mailhandlers could not unload any more mail until

the inside mail was worked off. The Service asserts that because most of the backed up mail was of a certain type, it caused a light workload situation on the Sack Sorters. Accordingly, the Service points out that Management decided to use the Sack Sorters to work up the palletized mail and relieve the congestion. The Service contends that this allowed the entire plan to flex its operations, unload more mail and get all operations, including the Sack Sorter, working.

The Service argues that the Union repeatedly asserted that the Mailhandlers could have been doing other work normally done by Mailhandlers and that the sack sorting palletized mail was not necessary work. However, the Service asserts that what needed to be done was to work the oldest mail and the time-valued mail. The Service further argues that the Union cannot dictate what work needs to be done. Rather, it is solely a function of Management to decide what work needs to be done.

With respect to Article 8.5, the Service contends that the Union failed to show that Clerk employees who were on the Overtime Desired List ("OTDL") were bypassed in any way. The Service asserts that no testimony or other evidence was proffered by the Union to show that OTDL employees were deprived of overtime when the Service used Mailhandlers to run the palletized mail through the Sack Sorter. The Service contends that the Union did not show which Clerks were available to work overtime during the relevant time period. The Service points out that Article 8.5 F of the collective bargaining agreement limits Management's use of non-OTDL

employees and cites the specific restrictions. The Service notes that the Union failed to submit any work hour reports for some of the days in question, specifically November 1 and 7, and that it is impossible without further knowledge of who and who is not on the OTDL to determine whether employees could have worked more overtime. Instead, the Service argues that the Union "threw" copies of work reports at the Arbitrator and said that not everyone worked the maximum amount. This, the Service asserts, is misleading and does not alone serve to support the Union's assertions.

The Service notes that testimony by Union witness George Prusak only showed that the Union argued that Management should have first maximized the OTDL. The Service argues that this assumes that maximizing the OTDL was possible and that such action would have contributed to getting the mail out. The Service also notes that if this had been done, the Union would not have grieved the instant dispute because maximizing the OTDL appeared to be their only argument. The Service argues that testimony showed that clerks did not want more overtime but were in fact complaining of too much overtime.

With respect to Article 15, the Service argues that the instant grievances do not involve any violations of the grievance procedure and thus Article 15 does not apply. Similarly, the Service argues that Article 19 does not apply because the Union did not show a violation of Article 19. Moreover, it is clear that local unions cannot file grievances under Article 19. The Service

notes that there were no creations or changes to handbooks and manuals in the instant dispute.

The Service argues that the Union inferred that the reason mail had to be worked by Mailhandlers on the Sack Sorter was due to prior abolishment of KP-12, manual distribution clerk positions several months prior to November, 1991. The Service argues that it is unrebutted that only ten (10) manual jobs were switched over to mechanized operations and that there was no reduction in the number of clerk craft positions or employees. The Service notes that every manual position that was abolished was reposted on the SPBS, with related manual duties congruent to the operation. The Service asks that if the abolishment of KP-12 positions caused the problem, why did it not occur prior to and after November, 1991? The Service asserts that the answer is because it was holiday mail that backlogged the system and not the abolishment of the KP-12 position.

With regard to Union Exhibit No. 1, the February 4, 1991, Grievance Resolution Improvement Process or GRIP Settlement Agreement, the Service argues that the Parties testified in the instant grievances that the fact circumstances in that case differed from the present dispute. In the GRIPS Settlement, Management had set up another manual distribution unit where it used Mailhandlers to sort flat bundles. The Service asserts that the distribution purported to be the same as used in the 2C and 3C pallet operation which clerks performed, and it occurred in the opening unit. Since the SPBS's came into the plant, the Service

states that the manual operation was moved to the primary unit, as Steve Bertels testified. The Service argues that the GRIP Settlement Agreement was not precedent setting as it was made at Step 2 of the grievance procedure. The Service argues that pursuant to Article 15, Step 1 and Step 2 settlements cannot be a precedent for any purpose. Accordingly, the Service argues that it would be improper to utilize it as determinative in the instant grievances. The Service notes that even so, the settlement agreement did allow for Mailhandlers to perform manual distribution under the provisions of Article 7.2.

With regard to the weight of the mail, the Service notes that Union witnesses testified that the weight of the bundles passing through the Sack Sorter weighed closer to ten (10) pounds and witnesses for the Service testified that the bundles weighed closer to twenty (20) pounds. The Service states that the Union did not provide any sample bundles. The Service points out that the weight regulations in Service Exhibit No. 3 in Section 645.34 state the bundle mailings must be machineable by sack sorting equipment. The Service submits that this indicates that palletized bundles can be worked on the sack sorting equipment.

It is the Service's position that while Management has normally chosen to work the mail on the SPBS, it reserves the right to work the mail on other operations. The Service points out that the Union did not complain when Management first worked the mail on the SPBS when it had previously been worked on the "horseshoe" manual operation. The Service also notes that the Union did not

protest when Management worked the mail on the parcel sorter - another Clerk operation. The Service submits that if Management has the right to chose which operation to work the Mail on, then Management had the right to assign it to the Sack Sorter.

With respect to the remedy, the Service asserts that the Arbitrator is left to guess the remedy because the Union failed to show either a violation of the Agreement or an entitlement to remedy. The Union did not show that the clerks were harmed, available, qualified or that they could have done the job in the time frame required. The Service submits that the Union must show how much time is involved in order to compensate anyone. The Service submits that the Union failed to submit any evidence to support a remedy.

The Service argues that it would be unfair to remand the issue back to the Parties because of the passage of time and the difficultly in resurrecting records that may no longer exist. The Service contends that the Union could have obtained relevant information at the time the grievances were filed but did not. The Service also argues that at the time it would not have been difficult for the Union to obtain or calculate hours but at this late date it would be nearly impossible. In support of its' position, the Service cites How Arbitration Works, by Elkouri and Elkouri (4th Ed., BNA. 1985) at page 402, wherein the authors noted that arbitrators have "required a showing of injury to justify damages and where the existence of any such injury was too speculative he refused to award damages." Purmutit Co., 19 LA 599, 600 (M. Trotta, 1952).

The Service argues that while it submits that the Union did not prove its case, should the Arbitrator disagree, there is still no entitlement to remedy in this case for the following reasons. The Service contends that (1) the Union did not show how management could have conducted the operation in any other way; (2) the Union did not show who was available and how those employees could have performed the work; and (3) the Union did not show which employees were on the OTDL or which employees were harmed. The Service notes that no employee was deprived of their guaranteed hours and that overtime is not a guarantee. The Service submits that the OTDL is merely a pecking order, and that when Management decides that overtime is necessary it will first use the OTDL before mandating overtime to full-time regular employees. In addition, the Service argues that no remedy is appropriate because (4) Management's action was not arbitrary or capricious; (5) the action taken was temporary and was not repeated; and (6) Management's action was not done to avoid overtime, to deprive clerk craft members of hours,to utilize lower level employees (Mailhandlers were also at the PS-5 level) or as an anti-union tactic. Based on the foregoing, the Service requests that the instant grievances be denied.

OPINION:

This is a contract violation dispute involving four grievances that have been joined for hearing. The Parties submitted the following issue(s) to the Arbitrator for resolution:

> 1. Did the Postal Service violate Articles 7, 8, 15 and 19 of the National Agreement? If so, what is the appropriate remedy?

2. Can the Postal Service take palletized bundles of magazines and work them on the Sack Sorter?

It is the Union's position that the Service violated the Agreement when it crossed craft lines and gave the palletized mail work to the Mailhandlers without first maximizing the Overtime Desired List for clerks and without first advising the Local Union President. The Service contends that this is allowed under the Agreement to process types of mail as it sees fit and that it can process palletized mail on the Sack Sorter.

The Arbitrator has considered the testimony, documentary evidence and arguments presented by the Parties and concludes that the Service violated the Agreement when it breached the February 4, 1991, GRIP Settlement Agreement and instead gave palletized mail distribution work to the Mailhandlers without first maximizing the Overtime Desired List for Clerks. Accordingly, the Arbitrator concludes that palletized mail distribution work belongs to the Clerk Craft and therefore may not be worked on the Sack Sorter. The Arbitrator's findings, conclusions and reasoning are set forth below.

The Parties' Agreement provides in Article 7, Section 2 B and C that:

> B. In the event of insufficient work on any particular day or days in a full-time or part-time employee's own scheduled assignment, management may assign the employee to any available work in the same wage level for which the employee is qualified, consistent with the employee's knowledge and experience, in order to maintain the number of work hours of the employee's basic schedule.
>
> C. During exceptionally heavy workload periods for one occupational group, employees in an occupational group experiencing a light workload period may be assigned to

> work in the same wage level, commensurate with their capabilities, to the heavy workload area for such a time as management determines necessary.

Article 7 allows Management to cross craft lines when the workload for one occupational group is light and the workload for another occupational group is exceptionally heavy.

In the instant grievances, the Service assigned palletized mail to be sorted on the Sack Sorter by the Mailhandlers because the palletized mail was backed up and the Sack Sorter was available to distribute the mail. It is undisputed that normally the Clerk Craft is responsible for sorting the palletized mail. However, Mailhandlers were given the work because the Sack Sorter was free and the Service wanted to get the mail moving.

The Union asserts that Article 7 only allows the crossing of craft lines when the workload is light, not when a particular operation, such as the Sack Sorter in this case, is experiencing a light workload. The Arbitrator agrees. The express written language of Article 7 preserves craft work unless the workload of one occupational group is light and the work of another occupational group is heavy. In the instant grievances, there was no persuasive evidence that the Clerks had an exceptionally heavy workload that would warrant giving their work to the Mailhandlers in lieu of maximizing the overtime list first. Rather, the palletized mail traditionally worked by the Clerks was given to the Mailhandlers because the Sack Sorter, a Mailhandler operation, was available. Accordingly, the Arbitrator must conclude that the Service failed to meet the requirements of Article 7 when it

crossed craft lines and gave the palletized mail work to the Mailhandlers.

The Service took the position at the hearing that the Sack Sorter operation was used because time-valued mail was backed up and the Service was desperate to get the mail out. The Union argues that the time-valued mail exigent circumstances described by the Service was a new argument presented at hearing and that the Union has been "blindsided" by the Service's attempt to make such a claim at this stage of the proceedings. A review of the grievance documents reveals that the Service did not state that exigent circumstances, such as a back-up of time-valued mail, existed at the time the Service gave the palletized mail work to the Mailhandlers. (Joint Exhibit Nos. 2, 3, 4 and 5). Rather, the Service stated at the Step 3 Appeal level that "The bundles were sorted on the Sack Sorter when mail volume was low on the Sack Sorter." Id. The Union's argument that Article 15 precludes the Service from relying on a new argument not asserted during the grievance procedure prevails. The Arbitrator, therefore, must disregard any of the Service's contentions that it was forced to cross craft lines and turn to the Sack Sorter operation because time-valued mail was backlogged and efficient mail service demanded such action.

The Service argues that the Union bears the burden of proof in this case and that the Union failed to establish that the Clerk Craft has exclusive rights to process the palletized mail. The Service asserts that Management has the right to operate the Sack

Sorter as the Service deems appropriate. The Union argues that the Parties' February 4, 1991 Grievance Resolution Improvement Process ("GRIP") Settlement Agreement governs the instant grievance and establishes that the Clerk Craft is entitled to the palletized mail work. The Union claims that the GRIP Settlement is binding and has precedent value.

The terms of the February 4, 1991, GRIP Settlement Agreement expressly state:

> The parties agree that all distribution of 2nd and 3rd Class Flat Bundles is to be performed by the Clerk Craft in accordance with Regional 399. It is further agreed that Mailhandlers may only be utilized for this when the express conditions of Article 7, Section 2 B and C are clearly met; otherwise such use of Mailhandlers will constitute a Cross Craft violation. In addition, the Parties agree that the 2C and 3C Pallet operation will be returned to the Opening Unit in accordance with RI-399. Further, as a complete and final settlement of all pending grievances, relative to management crossing crafts by having the mail distributed by Mailhandlers in the NMC Slicks, Elway, Priority Pit, etc., it is agreed that 2700 hours at the straight-time rate will be paid and divided up amongst those Clerk Craft employees on the first quarter OTDL. Names to be supplied to by the Union.
> (Emphasis added).

The Service asserts that Article 15 of the Collective Bargaining Agreement states that Step 2 settlements are not precedent setting. Therefore, the Service contends that the February 4, 1991, GRIP Settlement Agreement is not precedent setting. Article 15.2 Step 2 (e) states as follows:

> (e) Any settlement or withdrawal of a grievance in Step 2 shall be in writing or shall be noted on the standard grievance form, but shall not be a precedent for any purpose, unless the Parties specifically so agree or develop an agreement to dispose of future similar or related problems. (Emphasis added).

The Service argues that the GRIP Settlement is not precedent setting according to Article 15 of the Parties' Agreement. The Arbitrator disagrees. The Parties' February 4, 1991, GRIP Settlement Agreement clearly establishes that the distribution of palletized mail work for 2nd and 3rd class Flat bundles belongs to the Clerk Craft unless the conditions of Article 7, Section 2 B and C have been met. The GRIP Settlement Agreement reflects the Parties' intent regarding this type of work - whether it be by manual distribution or by using a mechanized operation like the Sack Sorter. The distribution of palletized mail for 2nd and 3rd class flat bundles described in the February 4, 1991, GRIP Settlement Agreement is the precise type of work at issue in the instant grievances. The Parties obviously developed an agreement in the GRIP Settlement regarding this type of work for the future. To hold otherwise would render the GRIP Settlement Agreement meaningless and ignore the clear and unambiguous language of Article 15.2 Step 2(e). Accordingly, under Article 15.2 Step 2(e) the GRIP Settlement Agreement must be considered as precedent setting.

It is the Arbitrator's opinion that the Service cannot ignore the February 4, 1991, GRIP Settlement Agreement and assign the palletized distribution mail work to the Mailhandlers in violation of Article 7 Cross Craft language. The GRIP Settlement only allows the Service to assign the work away if the conditions of Article 7 have been met. In the instant grievances, as discussed above, the conditions of Article 7 were not met. Accordingly, the Arbitrator

finds that the Service violated the GRIP Settlement Agreement when Management assigned the palletized mail to the Mailhandlers without meeting the stated requirements of Article 7, Section 2 B and C. Similarly, the Arbitrator must conclude that working palletized mail on the Sack Sorter, a Mailhandler operation, also violates the GRIP Settlement Agreement.

The Service also contends that a local union is not allowed to file grievances under Article 19 of the Collective Bargaining Agreement. The Service further argues that there was no violation of Article 19 in any event because there was no violation of handbooks or manuals. While the Arbitrator notes that the Service's arguments regarding Article 19 have merit, it is the Arbitrator's opinion that the Article 19 arguments alone are insufficient to overcome the instant grievances and warrant a finding in favor of the Service.

The Service is correct in its assertion that the Union bears the burden of proof in this case. However, it is well-established that "the burden of going forward with the evidence may shift during the course of the hearing; after the party having the burden of persuasion presents sufficient evidence to justify a finding in its favor on the issue, the other party has the burden of producing evidence in rebuttal." How Arbitration Works, Elkouri and Elkouri (4th edition, BNA, 1983) pages 324-25.

It is the Arbitrator's opinion that the Union has more than made out a prima facie showing that the Service violated the Parties' Collective Bargaining Agreement and the February 4, 1991,

GRIP Settlement Agreement when it assigned palletized distribution mail work belonging to the Clerk Craft to the Mailhandlers. The Service must be able to rebut the Union's evidence with evidence supporting Management's position that it did not violate the Parties' Agreements in order to prevail.

Specifically, the Service must present evidence that Management was not in violation of the GRIP Settlement Agreement but that it was allowed under the Parties' Collective Bargaining Agreement to cross craft lines and assign the palletized mail work to the Mailhandlers instead of the Clerk Craft. In the Arbitrator's opinion, the Service failed to rebut the Union's case.

The Service made several assertions regarding Management's right to run an efficient operation and operate Sack Sorters as it deems appropriate. While the Arbitrator is mindful of the important need to run the Postal Service in an efficient and flexible manner, it is the Arbitrator's opinion that the Service is nevertheless bound to operate its business within the boundaries of the Parties' Agreement. The Arbitrator also notes that while the Service repeatedly argued that the Clerk Craft did not have exclusive rights to the palletized mail distribution work, the GRIP Settlement Agreement clearly states that the Clerk Craft is entitled to that work absent the conditions specified in Article 7. It is the Arbitrator's opinion that assertion and argument alone cannot rebut the Union's credible evidence. Rather, absent any contractual authority for the Service's clear violation of the Parties' Collective Bargaining Agreement and the GRIP Settlement

Agreement, the Arbitrator must conclude that the Union prevails in this dispute.

The Service also claimed that there was no violation of Article 5 in this case because the Service did not change the hours, wages or working conditions of the affected employees. The Union asserts that the Service violated Article 8 when it failed to give clerk employees on the Overtime Desired List ("ODL") overtime and instead gave the palletized distribution work to the Mailhandlers. It is the Arbitrator's opinion that the Service's failure to give the Clerk Craft the palletized distribution work had a negative effect on the hours, wages and working conditions of the Clerk Craft employees in violation of Article 5. The Arbitrator also finds that Clerk Craft employees on the ODL were deprived of overtime compensation in violation of Article 8. Although the Service asserts that the Union did not show specifically who those employees were or how many overtime hours were lost, it is the Arbitrator's opinion that that does not defeat the Union's right to remedy a wrong.

The Service asserts that to remand the remedy back to the Parties would be unjust given the passage of time in this case. The Arbitrator disagrees. A clear violation of the Parties' Agreement occurred and must be remedied as best as possible. The Arbitrator is confident that the Parties will be able to implement a remedy that reflects the fact that Clerk Craft employees were deprived of Clerk Craft work and overtime during the relevant time period.

AWARD

The Arbitrator concludes that the Service violated the Agreement when it breached the February 4, 1991, GRIP Settlement Agreement and instead gave palletized mail distribution to the Mailhandlers without first maximizing the Overtime Desired List for the Clerk Craft. Accordingly, the Arbitrator concludes that palletized mail distribution work belongs to the Clerk Craft and therefore may not be worked on the Sack Sorter.

The Arbitrator further concludes that the affected Clerk Craft employees on the Overtime Desired List for the period relevant to this dispute be made whole at time and one half for all distribution of 2C and 3C palletized mail by the Mailhandler craft.

The Arbitrator shall retain jurisdiction over the remedial aspect of this dispute for a reasonable period of time, not to exceed sixty (60) days unless otherwise expressly agreed to by the Parties.

Grievance sustained.

Lamont E. Stallworth
Labor Arbitrator

Signed this 17th day of November, 1994

City of Chicago
County of Cook
State of Illinois

LES:CG

ATTACHMENT # 8

REGULAR ARBITRATION PANEL

IN THE MATTER OF THE ARBITRATION BETWEEN UNITED STATES POSTAL SERVICE AND AMERICAN POSTAL WORKERS UNION, AFL-CIO	GRIEVANT: CLASS ACTION CASE NO:G87C-4G-C91025373 FORMERLY:S7C-3U-C0038573 APWU NO: NONE SUPPLIED POST OFFICE: LOCKHART, TEXAS

BEFORE: LOUIS V. BALDOVIN, JR., ARBITRATOR

APPEARANCES:

FOR THE U.S. POSTAL SERVICE: C. A. MEYER, ADVOCATE

FOR APWU: PETER O. VOGEL, ADVOCATE

PLACE OF HEARING: LOCKHART, TEXAS

DATE OF HEARING: NOVEMBER 22, 1994

DATE OF AWARD: FEBRUARY 23, 1995

RELEVANT CONTRACT PROVISIONS: ARTICLE 7.2.C

CONTRACT YEAR: 1990 - 94

TYPE OF GRIEVANCE: CONTRACT

AWARD SUMMARY

THE GRIEVANCE IS SUSTAINED. MANAGEMENT VIOLATED THE NATIONAL ARGEEMENT BY PRE-SCHEDULING PTF CARRIERS TO PERFORM PTF CLERK WORK.

Louis V. Baldovin Jr

LOUIS V. BALDOVIN, JR.
ARBITRATOR

ISSUE

Whether Management violated Article 7.2.C. of the National Agreement by assigning PTF Clerk Craft work to PTF Carriers to equitably distribute work hours? If so, what is an appropriate remedy?

STATEMENT OF THE CASE

The hearing opened as scheduled on 12-22-94 at 9 a.m. in Lockhart, Texas. All parties were afforded the opportunity to call and to cross examine witnesses, to submit documentary evidence, to make opening and closing argument and to file a post hearing brief. Briefs which were scheduled to be filed postmarked 1-18-95 were extended to 2-13-95 by mutual agreement of the parties and the hearing was declared closed on 2-15-95 when the final brief was received. The Arbitrator tape recorded the proceedings to assist him in reviewing the record and preparing this Award.

DISCUSSION AND OPINION

This is a contract case brought forward by the Union and therefore it has the burden of proof. Article 7.2.C. which is alleged to have been violated deals with Management's ability to make cross craft assignments and the circumstances which must exist before so doing. The Union contends that since Management was pre-scheduling cross craft assignments the Wednesday prior to the week the work was to be performed,

it clearly violated Article 7.2.C. of the N/A. Said provision privileges Management to make cross craft assignments if there is an exceptionally heavy workload period for one occupational group, and if employees in another occupational group are experiencing a light workload period. In such event the latter may be assigned across craft lines to perform some of the work of the former. The Union represented that its position was supported by Arbitrator Bloch's 1982 award in Case No. H8S3PC8027. At step 2 of the grievance procedure, the instant grievance was sustained in part and denied in part. (Jt. Ex. 2, p. 3.). Management's step 2 response states, in pertinent part: "...it was determined that a total of 12 hours of cross-craft work was performed which is indeed in violation of the National Agreement. These work hours will be paid to the 3 part-time flexible clerk craft employees at the Lockhart Post Office. These are work hours during which PTF carriers worked and the PTF clerks did not, according to the schedules provided in the grievance package." Thus, the Postal Service conceded that to assign PTF Carriers clerk work when clerks are non scheduled is indeed a violation of the N/A. One portion of the grievance that was denied involved a claim that a custodian was being used to dispatch mail to Austin, Texas. That issue apparently has been dropped by the Union since it was denied at step 2 and was not pursued by the

Union at the arbitration hearing. The other portion of the grievance that was denied at step 2 was the Union's claim that PTF Carriers were regularly scheduled in advance to do clerk craft work in violation of Article 7.2.C. which is the issue before this Arbitrator. Management's step 2 denial of this aspect of the grievance states: "The Lockhart Post Office utilizes carrier craft employees to perform clerk craft work during the same hours that clerk craft employees are performing those duties. This work is performed in the most efficient manner to meet the needs of the service and is well within the provisions of Article 3 of the National Agreement taking into consideration Article 7." Although the Union filed fairly detailed "Additions and Corrections", the step 3 denial gave no rationale, only a cursory denial. (Jt. Ex. 2, p. 7). As can be seen from a review of Management's step 2 rationale for denial, Management concedes it was assigning carrier craft employees clerk craft work. It takes the position that it is privileged to do so if such work is assigned during the same hours clerk craft employees are performing those duties and by doing so the work is performed in the most efficient manner to meet the needs of the service. The Postal Service cited several prior arbitration awards in support of its position. One of the cases cited was a 1989 award by Arbitrator T. J. Erbs (Case No. C4C-4G-C23635. In that award Arbitrator Erbs at p. 7, stated, inter

alia, that "The provisions of Article 7.2, as interpreted by many arbitrators, do not appear to intend to authorize the Postal Service to cross craft lines merely to provide efficiency nor for the purpose of avoiding overtime. Arbitrator Erbs, as have several other arbitrators, cited Arbitrator Bloch's 1982 award in Case No. H8S-5F-C8027 quoting the following analysis of Article 7.2 by Bloch:

> Taken together, these provisions [referring to Article 7.2.B and C] support the inference that Management's right to cross craft lines is substantially limited. The exceptions to the requirement of observing the boundaries arise in situations that are not only unusual but also reasonably unforeseeable. There is no reason to find that the parties intended to give Management discretion to schedule across craft lines merely to maximize efficient personnel usage; that is not what the parties have bargained. That an assignment across craft lines might enable Management to avoid overtime in another group for example, is not by itself, a contractually sound reason. It must be shown either that there was "insufficient work" for the classification, or, alternatively, that work was "exceptionally heavy" in one occupational group and light, as well, in another.

The Union filed its grievance on 3-4-91 and concedes its requested remedy cannot be retroactive beyond 14 days prior to 3-4-91. It further contends that the alleged contract violation continued up to 2-1-93 when the new Post Master ceased the prior practice of pre-scheduling PTF Carriers to perform clerk work. It appears that during the period complained of by the Union there was regularly more as opposed to "exceptionally heavy" clerk work than carrier work. According to Supervisor for Customer Services Barrone,

if the PTF Carriers did no clerk work they would come out with 20 hours or less, so Management assigned some of the PTF clerk work to the PTF Carriers to generate a reasonable amount of hours for the PTF Carriers. According to the Union, the work, up to 40 hours should have remained with the PTF Clerks and not been assigned to the PTF Carriers. The Post Master at the time, according to Union Steward Reichl, was adamant about having the right to interchange work between the PTF Clerks and Carriers. This position of course flies in the face of the Bloch award. The former Post Master, now retired, was not available to testify or refute this steward's testimony. According to Management witness Barrone, the practice of using PTF Carriers to do clerk work to get them a reasonable amount of hours had been going on since 1978 and continues to today. Barrone's testimony in this regard is questionable since the Union, as noted above, does not complain about the work assignments being made since 2-1-93, because the new Post Master has ceased the complained of pre-scheduling of clerk work across craft lines. The Postal Service argues that in small offices like Lockhart, Texas, PTF's make some of their hours in other crafts. It submits that a Memorandum of Understanding between the parties (Jt. Ex. 1, p. 265) permits cross craft assignments to continue as they were made under the 1978 N/A, and that, as testified to by Barrone, cross craft assignments were made

regularly at the Lockhart Post Office under the 1978 M/A. Barrone was not employed at the Lockhart facility until April 1980 and bases his testimony on what he was told by others. While hearsay can be admissible, it does not carry much evidential weight absent other evidence tending to corroborate the hearsay. The case at bar, appears to be a case of first impression. None of the cases cited by the Postal Service have any factual similarity to what occurred at the Lockhart Post Office. At Lockhart neither the PTF Clerks or PTF Carriers were working 40 hours. In their respective crafts they appear to have been making their basic hours, and as testified to by Barrone the cross craft assignments of clerk work to PTF Carriers was for the purpose of getting a reasonable amount of hours for the PTF carriers. In short, is this a contractually permissible reason for making cross craft assignments? While the purpose of the cross craft assignments made at Lockhart may be laudatory and equitable, it does not appear that the National Agreement sanctions cross craft assignments in order to equitably balance PTF hours in the different crafts, and Management does not have unlimited discretion to schedule across craft lines merely to maximize efficient personnel usage. It is true, as noted by the Postal Service that the Union did not support its claim for 288 hours with time cards and has not demonstrated the number of clerk hours assigned

to the PTF Carriers for the period covered by the grievance. However, throughout the grievance procedure and at the hearing the Postal Service has admitted that clerk work was assigned to PTF Carriers and the reason for so doing as shown by Barrone's testimony and the Postal Service's written step 2 denial. Former Post Master Garza refused to supply the Union with the work schedules it requested which would show the pre-scheduling of clerk craft work to PTF Carriers. No support has been offered for the proposition that cross craft assignments are permissible to equitably balance PTF hours in the different crafts were the PTF's in the respective crafts are receiving their basic hours, but less than 40 hours. The Postal Service contention that the cross craft assignments described herein were a past practice and therefore privileged is without merit. Conduct which violates the N/A that has been engaged in over a period of time, standing alone, does not rise to the level of acquiescence therein by the Union unless it is shown that the Union was aware of that conduct and that its inaction over a substantial period time may be deemed to constitute acceptance of the practice. The evidence does not establish such an awareness by the Union. The Postal Service additionally contended that a Memorandum of Understanding p. 265 of the N/A authorized Management to continue cross craft assignments as they were made under the 1978 N/A. There is insufficient evidence to establish that

pre-scheduling PTF Carriers to do clerk craft work to balance PTF hours in different crafts was a practice engaged in under the 1978 N/A, nor is there any reason to conclude that the intent of the MOU was to sanction contract violations because they had been engaged in since 1978. Although Post Master Garza failed and refused to supply the Union with the work schedules (Form 1627) it had requested which showed the pre-scheduling complained of, the Postal Service argued that the Union did not file a grievance over former Post Master Garza's refusal to supply the work schedules (Form 1627), nor did it file an unfair labor practice charge with the NLRB. While both of such actions would have been advisable, the fact that neither action was pursued does not cure Garza's non compliance with Article 15.2. (d) as that failure to comply was consistently raised by the Union throughout the instant grievance procedure up through its "Additional and Corrections" and step 3, appeal. Neither the step 2 or step 3 denial responded to the failure to supply the work schedules. Post Master Garza was engaged in a continuing failure to make full disclosure. Had he done so when the initial request was made-- or at anytime the subsequent requests were made the period of liability for crossing craft lines, if being done improperly would have been minimal. If not improperly done, the grievance more than likely would have been resolved. Garza's refusal to supply the

information, in addition to flying in the face of the full disclosure provision raises an adverse inference that had he supplied the documents they would have been detrimental to his position. Although the Union never requested time cards, the remedy for a violation may be impacted thereby but the question of whether a violation exists is not. The fact that the former Post Master (Garza) would not supply the requested work schedules (PS Form 1627) makes clear that this was a failure to make full disclosure as required by Article 15.2.(d). . In Case No. SON-3N-C 3066 a 1992 Award by Arbitrator J. Reese Johnston, cited by the Postal Service, the arbitrator denied the grievance in that case on the basis of the Union's continued failure to make full disclosure by failing to provide information as to what supervisor was doing what work on what day and for what period of time, citing Article 15.2 (d), the full disclosure provision of the N/A. Johnston held that the grievance was therefore not arbitrable. Simply put, "full disclosure" is a two way street and the Union was entitled to receive the requested work schedules. The Postal Service, relying on the same award by Arbitrator Johnston, also contends that the Union failed to demonstrate the specificity needed to prove a violation of the N/A. In that case the arbitrator relied upon the fact that the grievance did not state nor did the Union establish the type of mail involved, what day and hour

the work was performed and by what supervisor it was performed. There is no claim in the instant case that supervisor's were doing clerk craft work and the Union did specify at step 2 the clerk craft work allegedly being performed by PTF Carriers. The claim in the instant case is that clerk craft work was being assigned to carriers and that such crossing of craft lines was being pre-scheduled on the Wednesday prior to the week the work was to be performed. The Union requested copies of the weekly work schedules on more than one occasion and its requests were either denied or ignored. (U. Ex. 1, p. 1-5). While cross craft assignments more than likely were made under the 1978 N/A, Barrone's hearsay testimony, standing alone, is not sufficient to establish that pre-scheduling work across craft lines was regularly done for the purpose of equitably distributing work hours among PTF's in different crafts. It is also noted that Arbitrator Bloch's Award, deemed controlling by the parties, did not issue until April 7, 1982, and dealt with conduct which occurred in November 1979. Therefore, conduct which may have been engaged in between 78 and 82 was necessarily impacted and affected by his award. What was apparent from Barrone's testimony was that the crossing of craft lines, which according to the Union has not been a problem since 2-1-93, was directly related to the staffing situation at Lockhart at the time. In short, they had more staff than

they had work. I cannot accept the proposition that the MOU referred to by the Postal Service, sanctions cross craft assignments made in violation of the N/A and/or which are contrary to the criteria established in the Bloch award. More importantly, the record discloses that at no time, until for the first time at the arbitration hearing, did the Postal Service contend that the cross craft assignments involved in the instant case were privileged under the MOU. This alone is sufficient grounds for rejecting that contention in view of the N/A requirement for "full disclosure". The Postal Service also contended that Article 7.2.A. of the N/A sanctions crossing craft lines to provide additional hours for the PTF Carriers. I cannot agree. Article 7.2.A. applies to situation where Management crosses craft lines... "to provide maximum full-time employment"... and does not encompass part-time employees. It allows management to ..."establish full-time schedule assignments by including work within different crafts" ...subject to certain requirements. Article 7.2.B. covers both full-time and part-time employees and allows crossing craft lines by providing that when there is ... "insufficient work on any particular day or days in a full-time or part-time employee's own scheduled assignment, management may assign the employee to any available work in the same wage level for which the employee is qualified, consistent with the employee's

knowledge and experience, in order to maintain the number of work hours of the employee's basic work schedule." (emphasis supplied). This permits cross craft assignment of PTF's to maintain the number of work hours in the PTF's basic work schedule only, and does not sanction pre-scheduling across craft lines. Section 7.2.C. allows cross craft assignments in limited circumstances as noted by Arbitrator Bloch. There must be an exceptionally heavy workload for one occupational group and a light work load period in another. In that event management may, if it so elects, assign employees from the occupational group experiencing a light work load period to the heavy work load area for such time as management determines necessary. None of the circumstances in Article 7, appear to sanction pre-scheduling the crossing of craft lines to balance work hours among different crafts.

AWARD

The grievance is sustained. See face page for further detail.

REMEDY

While every wrong deserves a remedy, the Union did not request time cards for the period involved. Those time cards would establish the actual hours involved in the complained of cross craft assignments when compared with the P.S. Form

1627 pre-scheduled cross craft assignments. Therefore, the requested remedy of reimbursement to the PTF Clerks for the clerk work hours given to the PTF Carriers for the period beginning 14 days prior to 3-4-91 up to 2-1-93, is subject to the availability of time cards for the period involved. Accordingly, the remedy shall be limited to reimbursement to the PTF Clerks for the clerk work hours assigned to the PTF Carriers during the above period of time for which time card records exist and show the hours worked by the PTF Carriers in the clerk craft. If records do not exist for the entire period, the remedy shall be limited to the period for which records exist. The aggregate hours of clerk craft work assigned to PTF Carriers shall be equally divided among the 3 PTF Clerks involved for reimbursement purposes. Finally, since the Clerk PTF's who were not working 40 hours during the period involved, reimbursement should be at the straight time rate. It does not appear that any PTF Clerk would have exceeded 40 hours in a given week because of lost hours resulting from the improper cross craft assignments. I shall retain jurisdiction for 30 days from the date of this award in the event there are any unforeseen problems with this remedy that would require clarification. In such event, the parties are to file a joint motion for clarification detailing the problem or request a hearing date.

2-23-95

Louis V. Baldovin, Jr.
Arbitrator

ATTACHMENT # 9

REGULAR ARBITRATION PANEL

In the Matter of the Arbitration	Grievant: Class Action
between	Post Office: Clifton Heights, PA
UNITED STATES POSTAL SERVICE	Case Nos. E7C-2A-C-39820
	-43654
and	-44172
AMERICAN POSTAL WORKERS UNION AFL-CIO	Local Grievance Nos. 91-18-03
	91-18-04
	91-18-05
	91-18-26
	90-18-05

BEFORE: Susan Berk Arbitrator

APPEARANCES:

For the U.S. Postal Service:	John J. Simaitis Labor Relations Assistant
For the Union:	Jim Burke National Business Agent
Place of Hearing:	Philadelphia, PA
Date of Hearings:	March 11, 1992 and August 19, 1992

AWARD: The Postal Service violated the National Agreement by assigning a letter carrier VOMA employee mail processing duties on a regular basis and on overtime.

Date of Award: September 21, 1992

Susan Berk

I. Statement of the Case

The Clifton Heights, Pennsylvania Post Office employs a Vehicle Operator Maintenance Assistant (VOMA). The VOMA, who is a former letter carrier, regularly performs clerk craft duties and is assigned these duties on overtime. The American Postal Workers Union, AFL-CIO, ("Union" or "APWU") contends that the performance of clerk duties by a letter carrier VOMA on a daily basis and on overtime violates the National Agreement. The Union and the United States Postal Service ("Management" or "Postal Service") were unable to resolve the matter and the undersigned was duly designated to serve as the arbitrator in the instant grievance pursuant to Article 15 of the parties' 1987-1990 National Agreement.[1]

Hearings were held on March 11, 1992 and August 19, 1992, at which time representatives of the Union and the Postal Service appeared. Both parties were afforded full opportunity to offer evidence, to examine and cross-examine witnesses and to present oral argument. The record was closed at the conclusion of the hearing on August 19, 1992.

II. Issues

> Whether the Postal Service violated the National Agreement by assigning a letter carrier VOMA employee mail processing and time and attendance duties on a regular basis and on overtime and by placing the VOMA employee on the clerks' vacation schedule. If so, what shall be the remedy?

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[1]/ The parties agreed that this Opinion and Award will resolve all pending grievances concerning the assignment of clerk duties and clerk overtime to a letter carrier VOMA employee in the Clifton Heights, Pennsylvania postal facility.

III. Relevant Facts

The VOMA position is a multi-craft position and may be filled by an employee from the clerk craft, letter carrier craft, motor vehicle craft or a special delivery messenger. The VOMA is primarily responsible for the vehicle operations and maintenance program of the branch post office. Those duties, as contained the Standard Position 2-195 dated 8-16-79 included, among other duties, analyzing and making recommendations on requests for assignments of vehicles and additional vehicle service; developing schedules changes; soliciting bids for contract vehicles; making continuous analysis of all schedules of vehicle operations; formulating an annual planned program for the development of budget and vehicle procurement requirements; investigating all accidents involving vehicles driven by postal personnel; administering road tests; providing training; and soliciting bids from local firms in the automotive repair business to service the Postal Service vehicle fleet. The position description also provided that the VOMA may also participate in the mail processing operations of the post office.

In a series of correspondence and meetings in March and April, 1983 between the Postal Service and the Union, pursuant to Article 19 of the National Agreement, a revised Standard Position 2-195, Vehicle Operations Maintenance Assistant, PS-6, was agreed upon by the parties. The revised position description, among other changes, excluded mail processing duties as duties of the position. Other significant changes included the addition of duties of maintaining vehicle records and providing source data for the vehicle Maintenance Accounting system.

Clerk Craft Director Kenneth Wilson testified that the Union advised the Postal Service during these meetings that the Union wanted mail processing duties deleted from the VOMA position. According to Wilson's unrefuted testimony, it was also agreed that VOMA would keep vehicle operations records, but not time keeping records. In a cover letter dated April 27, 1983, Robert L. Yoder of the Labor Relations Executive Office of Program and Policies, advised the Union that "the comments and suggestions of the Union were considered and, to the extent practicable, were utilized." He further stated that "the draft, as it now stands, will be prepared for printing and distribution to the field in the near future."[2]

Wilson further testified that in 1989, the Union realized that it never received a copy of the revised position description.[3] In response to a request by the Union for "a copy of the current description for the position of Vehicle Operations Maintenance Assistant - Level 6, SP2-195," Assistant Postmaster General Joseph J. Mahon, Jr., sent Union President Moe Biller the revised position description on May 17, 1989, noting that it was "a copy of the position description revised in 1983."

In May, 1986, a VOMA position in the Clifton Heights postal facility was posted in a Notice of Vacancy Announcement. The announcement stated that "in addition to

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[2]/ Although Yoder specifically mentioned other items in his cover letter that were changed in the position description, the cover letter was silent as to the deletion of mail processing duties.

[3]/ Wilson testified that it was common for the Union not to initially receive job descriptions for clerk positions.

the Standard Position Description attached, successful bidder may perform any of the following duties:"

a) Participate in mail processing operations and delivery operations
b) Maintain a fixed credit
c) Prepare and maintain time records
d) Any other duties required by the Postmaster
e) Perform miscellaneous duties incident to general operations of the post offices.

Instead of the revised position description, the position description dated 8-16-79, which included the mail processing duties, was attached.

Letter carrier Paul Miekle bid for, and was awarded, the VOMA position effective June 21, 1986. In addition to his VOMA duties, Miekle performed mail processing on a daily basis and time and attendance duties on Saturdays.

The record is unclear as to the precise hours Miekle performed clerk duties. Union Shop Stewart Debra Fitzgerald testified that she and clerk Gene Forturia had witnessed Miekle perform clerk duties on a daily basis and that they recorded Miekle performing 1005 hours of clerk duties during the period of January, 1991 to February, 1992. She further testified that this figure did not include the 3 hours each Saturday that Miekle spent performing time and attendance duties. It was Fitzgerald's undisputed testimony that while Miekle was performing clerk duties, letter carriers were performing a substantial amount of overtime performing letter carrier duties.

Postmaster Edward Reilly's testimony contradicted Fitzgerald's testimony as to the number of hours Miekle performed clerk duties. While he acknowledged that Miekle performed clerk duties on a regular basis, he testified that he had a Clifton Heights foreman check Fitzgerald's record of hours and determined that during a two

month period the postal facility was closed on one day and that Miekle was on leave on 2 other days. He also testified that Miekle spent only 10 to 15 minutes on time and attendance duties.

Gene Forturia testified that he has worked at the Clifton Heights Post Office for 28 years. He testified that the VOMA employee is required to perform VOMA duties first and when those duties are completed, the VOMA is required to perform the duties of the craft from which the VOMA came from. Forturia further testified that the Union strongly objected to the posting of the VOMA Notice of Vacancy Announcement and job description when it was posted in 1986.[4]

Postmaster Reilly testified that a revised position description was never received at the Clifton Heights Post Office and therefore he was unaware of its existence. On cross-examination, Postmaster Reilly further testified that when he inquired with the Regional Labor Relations Office, he was advised that if he never received the position

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[4]/ The record reflects that the Postal Service had entered into a step 4 settlement agreement at the National level with the National Association of Letter Carrier (NALC), which is consistent with this testimony. That settlement agreement dated April 5, 1983 stated in relevant part as follows:

> The issued raised in this grievance involves the Vehicle Operations Maintenance Assistant performing letter carrier craft work and signing the letter carrier craft "Overtime Desired" list.
>
> As final settlement in all matters relating to this dispute, the parties at the national level agree to the following resolution:
>
> Vehicle operation - Maintenance Assistants are not eligible to place their names on the letter carrier craft "Overtime Desired" list. However, they may be assigned letter carrier's work in conjunction with their VOMA assignment if they were city carriers when they bid the VOMA assignment. [Emphasis added.]

description than the revised description was not official. He further testified that his office does not have 8 hours of VOMA or time keeping duties to perform on a daily basis and therefore he needed to supplement the VOMA and time keeping duties with other assignments. Postmaster Reilly acknowledged, however, that the time and attendance duties which Miekle performed were level 5 duties.

As to the overtime and vacation schedule allegations, it was Fitzgerald's testimony that Management regularly assigned clerk overtime duties to Miekle, as well as letter carrier and VOMA overtime work. His name also appeared on the clerk's vacation schedule. She also testified that other than Miekle, she had never seen a letter carrier performing duties performed by clerks. Fitzgerald testified that the Postal Service agreed in a step 4 settlement agreement between the Postal Service and NALC to treat employees assigned to VOMA positions as members of the craft from which they came. Dated April 23, 1987, the settlement agreement stated in relevant part:

> [w]hile employees from several crafts (clerk, carrier, special delivery, and PS 5 & 6 motor vehicle) are eligible to bid on a vacant VOMA position, once an employee becomes the successful bidder, he/she is represented by, and is treated as a member of, that same craft. This also applies to choice vacation bidding. In the future, the subject office will allow the VOMA to bid for choice vacation with the carrier craft.

Postmaster Reilly testified that under Article 8.5 of the National Agreement it was appropriate for Miekle to be on the clerks' Overtime Desired List (OTDL) because he is qualified and he is regularly performing clerk duties. Reilly testified that VOMA employees who perform clerk overtime work are not crossing crafts. A practice he admitted was prohibited. Reilly explained that Miekle is no longer a member of the letter carrier craft.

Reilly testified that he had not previously seen the settlement agreement cited by the Union and that any problem he may have had with a VOMA employee would have been discussed with someone in the clerk craft.

With respect to Miekle's name being placed on the clerks' vacation schedule, Reilly testified that it was only for the purpose of posting Miekle's schedule. According to Reilly, Miekle was treated differently from the clerks in regard to his vacation and his name did not appear on the letter carriers' vacation list. Reilly acknowledged that there was nothing in the parties' Memorandum of Understanding (MOU) to permit VOMA employees to be placed on a clerks' OTDL or vacation schedule.

Article 9, section B, of the MOU provides that "VOMA and Maintenance positions are not to be included in the determination of the maximum number of employees permitted off during the prime time vacation period." The MOU is silent as to whether the OTDL is established by craft, section or tour.

IV. The Parties' Contentions

A. The Union's Position

1. Crossing Crafts

The Union argues that the Postal Service violated the National Agreement when they assigned the VOMA employee from the letter carrier craft to mail processing and timekeeping duties on a daily basis. In support, the Union argues that the Postal Service, APWU and NALC agreed to revisions which eliminated mail processing duties, among other duties, from the VOMA position description. It is also the Union's contention that VOMA were never "authorized to perform time keeping duties."

Although the Postal Service never disseminated the revised position description, the Union argues that the Postal Service had the obligation to do so. Citing a step 3 settlement agreement between another postal facility and the Union that was reached after the Union put on its case before an arbitrator, involving the same issue, the Union argues that the Postal Service has acknowledged its obligation to not assign mail processing duties to letter carrier VOMA employees. Therefore, the Union argues that the assignment of clerk duties to a letter carrier VOMA employee violates the National Agreement and the Union requests that the Postal Service cease from assigning mail processing duties to the letter carrier VOMA in the Clifton Heights facility.

As to the remedy, the Union requests reimbursement to the clerk craft employees in Clifton Heights postal facility for the number of hours worked by letter carrier VOMAs performing clerk duties from June 21, 1986 until present at the overtime rate. The Union argues that the number of hours should be determined by using the same 1005 for a 13 month period it computed to be the hours worked by Miekle from January, 1991 to February, 1992.

2. Overtime and Vacation Schedule

The Union contends that Management also violated the National Agreement when it permitted Miekle's name to be placed on the clerks' OTDL and vacation schedule. In support, the Union argues that it is unrefuted that when Miekle was awarded the VOMA position he came from the letter carrier craft; that he was assigned overtime work from the clerks' OTDL; and that he made his vacation selection from the clerks' vacation schedule. The Union cites to the aforementioned settlement agreements

in support of its contention that employees who are assigned to a VOMA positions are treated as being in the craft from which they came. In addition, the Union argues that under the parties' local agreement, VOMA employees cannot be placed on the clerks' vacation schedule.

As a remedy, the Union requests that employees in the clerks craft in the Clifton Post Office be paid back pay from 1986 until the present. The Union requests that the arbitrator calculate the back pay based on 220 hours for a 13 month period, which represents the number of hours Miekle worked from January 1, 1991 to March 31, 1992.

B. Management's Position

1. Crossing Crafts

Management argues that the Union has failed to identify any contractual violation of the National Agreement or MOU which it has violated and thus has failed to meet its burden of proving that a violation has occurred.

The Postal Service argues that the Union's entire case rests upon an undated position description, which never became official. While the Postal Service acknowledges that there was discussion on the VOMA job description, it argues that there was no official change and that it was never disseminated to the field. The Postal Service argues that the Union has done nothing in the past, nor is it presently doing anything, at the national level, to effectuate dissemination of the position description.

It is the Postal Service's position that the 1983 position description was for a VOMA with 8 hours of work. The description does not specify what duties are to be performed in the event that the VOMA has less than 8 hours of work. Citing Arbitrator

Snow's award in A-C-N-6922, the Postal Service argues that "the position description is not the governing documentation in determining all the duties of the position." According to the Postal Service, one must look to Article 7, Section 2.B, which provides that Management may assign an employee to any available work in the same wage level for which the employee is qualified.

Moreover, the Postal Service asserts that the activities of the VOMA also conformed to the parties' past practice. Management notes that the VOMA has been doing the same duties without Union opposition since the job was created in the 60's. Until the first grievance was filed in November of 1990, the practice was consistent, repetitious and acceptable. The Postal Service argues that the Union has never grieved the 1979 position description and has in fact referred to it in other grievances.

As to the remedy, the Postal Service argues that back pay is not an option because it would have to apply to a specific employee. A requirement under 436.11 of the ELM. Further, the Postal Service argues that inasmuch as no individual was identified as being harmed, out-of-schedule, overtime and the like cannot be claimed or awarded. According to the Postal Service, Section 436.3 of the ELM calls for the identity of the employee. Since no one was identified as being harmed, redress under this section would be inappropriate.

2. Overtime and Vacation Schedule

According to Management, Article 8 provides that employees who are qualified and perform similar work can sign their name on the OTDL and can be assigned overtime work. Management contends that there is no language in either the National

Agreement or the MOU which requires overtime work to be assigned by craft. Management argues that the Union offered no evidence by way of documentation that the placement of Miekle on the clerk's OTDL was prohibited.

Therefore, Management argues that the Union has failed to meet its burden of proof to establish a contractual violation. The Postal Service requests that the grievance be denied.

V. Analysis and Opinion

A. Crossing Craft

Under Article 3 of the parties' National Agreement, Management has the right to determine the methods, means and personnel by which operations are to be conducted. That right encompasses the right to determine the duties of a position. However, as with any management right, Management may negotiate with the Union over the manner in which it exercises this right. In the instant dispute, the record establishes that Postal Management agreed, implicitly or explicitly, to exclude from the VOMA position mail processing duties.

The record establishes that the Postal Service proposed revision of the standard position description for the VOMA, level 6, position and met with APWU and NALC pursuant to Article 19 of the National Agreement. Although the record is not clear as to the motive for the Postal Service's deletion of the mail processing duties from the job description, it is clear that these duties were deleted from the revised job description.[5]

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[5]/ The record reveals that the initial draft of the revised job description proposed by the Postal Service did not include mail processing duties. However, it was Clerk Director Wilson's unrefuted testimony that the Union had advised the Postal Service that it wanted

In the cover letter forwarding the revised job description to the Union, Labor Relations Executive Yoder specifically advised the Union that the draft revised job description "will be prepared for printing and distribution in the near future." Subsequently, in response to a Union request for "a copy of the current description for the position of Vehicle Operations Maintenance Assistant - Level 6, SP2-195" in May, 1989, the revised job description was forwarded to Union President Biller as "a copy of the position revised in 1983." Therefore, the record establishes, as the Postal Service acknowledged in that letter, that the 1983 job description, which did not include mail processing duties, was agreed upon as the official job description for the level 6 VOMA position. The failure of the Postal Service to distribute the revised job description to the field does not negate an otherwise properly agreed upon job description.

Article 19 of the National Agreement provides that "all parts of handbooks . . . that directly relate to wages, hours or working conditions . . . shall be continued in effect . . .." Inasmuch as the VOMA level 6 job description had been revised to exclude mail processing duties, the Postal Service is precluded from assigning those duties to level 6 VOMA as a key function of the VOMA's day to day duties, as the record demonstrates occurred in the Clifton Heights Post Office.

While employees can be required to perform incidental duties that are not specified in their job description, the performance of mailing processing for a substantial portion of Miekle's daily duties cannot be found to be incidental in nature and are found to extend well beyond the scope of the VOMA job description. Job descriptions do not

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to have those duties deleted from the job description.

specify every duty required of an employee in a given position. However, if there is any meaning to job descriptions, they must outline the key functions of a position. The key function of the VOMA position is the operation and maintenance of the Postal Service vehicle fleet, not mail processing duties. Therefore, the performance of mail processing duties by Miekle for a substantial portion of Miekle's daily duties is not consistent with the revised job description for a VOMA level 6 position.[6]

The fact that the mail processing duties were included in the Notice of Vacancy Announcement does not warrant a contrary finding. A notice of vacancy cannot add core duties to a position which the parties agreed to eliminate from that position. Under Article 19 of the National Agreement, the job description shall continue in effect until such time that it is modified consistent with the provisions of that article.

Accordingly, I find that the Postal Service violated Article 19 of the National Agreement by assigning Miekle mail processing duties inconsistent with the VOMA job description.

In so ruling, I have considered the Postal Service's arguments and find that the arguments are not supported by the record.

Although the Postal Service contends that Article 7, Section 2.B, permits it to supplement Miekle's duties with mail processing duties, it did not establish that this

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[6]/ In light of Postmaster's Reilly's testimony that the Union's records of the hours Miekle performed clerks duties erroneously indicated that Miekle worked on a day in which the Post Office was closed and on 2 days which he was on leave, little wight can be given to the Union's records as a whole. However, inasmuch as Management verified as accurate the Union's records for the remaining part of January, 1991 and February, 1991, the record nonetheless reflects that Miekle worked at least 2 hours on each of his scheduled work days performing mail processing duties.

provision is applicable in the instant dispute. Article 7.2.B provides as follows:

> [i]n the event of insufficient work on a particular day or days in a full-time or part-time employee's own scheduled assignment, management may assign the employee to any available work in the same wage level for which the employee is qualified, consistent with the employee's knowledge and experience, in order to maintain the number of hours of the employee's basic work schedule.

Therefore, under Article 7.2.B, Management may assign an employee to work in another craft only if the work is in the same wage level for which the employee is qualified. However, there is no evidence in the record to establish that the mail processing duties which Miekle was performing are of the same wage level as Miekle's qualifications (level 6). In the absence of evidence that the duties performed by Miekle are of the same wage level, the Postal Service cannot met its burden of establishing that the assignment of mail processing duties to Miekle was consistent with Article 7.2.B of the parties' agreement.[7]

In addition, in the aforementioned settlement agreements, the Postal Service agreed with the NALC that VOMA employees would be treated as a member of the craft from which the employees came and specifically that letter carriers may be assigned letter carrier duties in conjunction with their VOMA assignments if they were carriers when they bid for the VOMA position. Although these settlement agreements are arguably not binding on the Postal Service with regard to the APWU, the agreements nevertheless clearly reflects the Postal Service's intent to treat VOMA employees as

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[7]/ While the Union bears the initial burden of establishing that the Postal Service violated the National Agreement when it assigned the mail processing duties to Miekle, the burden then shifts to the Postal Service to demonstrate that the assignment was proper under Article 7.2.B of the National Agreement, as it alleges.

members of the craft from which they came, including assigning duties of that craft upon completion of VOMA duties. In the instant dispute, there is nothing in the record to indicate that the letter carrier VOMA did not have sufficient letter carrier duties to perform on a daily basis. Rather, the record reflects that there was significant overtime work being performed by letter carriers which could have been performed by the VOMA as part of his own scheduled assignments.

I have also considered the Postal Service's assertion that there was a binding past practice of permitting the VOMA employee to perform mail processing duties and find that it is without merit. Even assuming that the applicable contract language is ambiguous, a past practice rises to the level of a binding practice when it has 1) clarity and consistency; 2) longevity and repetition; and 3) acceptability. Inasmuch as it was agreed that mail processing duties would be deleted from the VOMA job description, a finding cannot be made that the Union found the practice acceptable. Clearly, the Union opposed the assignment of these duties to a VOMA employee on the National level. The record also reflects that the Union objected on the local level when the Notice of Vacancy Announcement and job description was posted.

Based on the foregoing, I find that the Postal Service violated the parties' National Agreement when it assigned mail processing duties to Miekle under the circumstances of this case.[8]

As to the time and attendance duties, I find that the record contains insufficient

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[8]/ The basis for Arbitrator DiLeone's finding in C8N-4B-C-19292 that the Postal Service did not violate the National Agreement when it assigned mail processing duties to a VOMA was predicted solely on the inclusion of these duties in the VOMA prior job description.

evidence to render a finding as to whether the assignment of those duties violated the National Agreement. The Union in its opening statement and in some testimony alluded to the fact that the time and attendance duties which Miekle performed were clerk duties. However, the Union failed to meet its burden of establishing that Miekle was performing clerk duties and that the performance of those duties under the circumstances of this case violates the National Agreement.[9] The moving party in an arbitration proceeding has the burden of developing the facts and arguments in support of its position. Failure to do so, would preclude the arbitrator from ruling in its favor.

B. Overtime Desired List and Vacation Schedule

The Postal Service argues that the assignment of overtime clerk duties to Miekle is permitted under Article 8 of the National Agreement because Miekle regularly performed clerk duties.

Article 8, section 5, of the parties' National Agreement provides in part:

> [w]hen needed, overtime work for regular full-time employees shall be scheduled among qualified employees doing similar work in the work location where the employees regularly work in accordance with the following[.]

Inasmuch as I find that the letter carrier VOMA employee's performance of mail processing duties on a regular basis is inconsistent with the agreed upon job description, I find that letter carrier VOMA employee does not regularly perform similar work

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[9]/ The same reasoning that the Union articulated in regard to the mail processing duties is not applicable in regard to time and attendance duties. The time and attendance duties were never included in the job description and were never specifically agreed to be excluded. In addition, the number of hours involved with mail processing differed from those required for time and attendance duties.

within the meaning of Article 8. Accordingly, I find that the letter carrier VOMA employees does not perform similar work of clerks and this the assignment of clerk duties on overtime violates Article 8 of the National Agreement.

Because the local MOU provides that VOMA positions "are not to be included in the determination of the maximum number of employees permitted off during the prime time vacation period," Miekle should not appear on the vacation schedule. However, as Postmaster Reilly testified that Miekle was treated differently from clerks in regard to the scheduling of vacations, I find that the record does not establish that the Postal Service violated the parties' agreement.

VI. Remedy

The assignment of overtime clerk duties to Miekle deprived clerks in the Clifton Heights Post Office the opportunity to perform overtime work which they would have performed but for the Postal Service's violation of the National Agreement. Therefore, clerks on the OTDL who would have worked overtime but for the Postal Service's assignment of mail processing duties to Miekle are entitled overtime pay consistent with the overtime provisions of the parties' National Agreement.[10]

However, this award does not include overtime pay to clerks for the hours Miekle performed mail processing duties during his regular workweek. It is too speculative to conclude that clerks in the Clifton Height Post Office would have performed overtime had Miekle not performed clerk duties.

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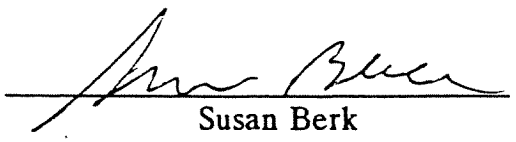
[10]/ Contrary to the Postal Service's argument, Management Instructions dated 3-15-90, Section IIA.1 and Section 436.11 of the ELM do not require that the employee be specifically identified. Those sections merely define who is entitled to back pay.

As the record is unclear as to the numbers of overtime hours that Miekle performed mail processing duties on overtime, the parties shall meet within 30 days of this Opinion and Award to determine who is entitled to overtime pay and the amount of the overtime pay, which shall include the period from when Miekle was assigned the VOMA position and until the date of this award. Pursuant to the Union's request, I shall retain jurisdiction solely for the purpose of resolving any dispute regarding the award of overtime pay.

VII. Award

The Postal Service violated the National Agreement by assigning a letter carrier VOMA employee mail processing duties on a regular basis and on overtime. The Postal Service shall cease and desist from assigning mail processing duties to letter carrier VOMA employees and shall award overtime pay, consistent with this Opinion and Award, to clerks employed at the Clifton Heights Post Office, who were on the OTDL during the relevant period.



Susan Berk

ATTACHMENT # 10

REGULAR ARBITRATION PANEL

In the Matter of the Arbitration	**GRIEVANT:** Class Action
between	**POST OFFICE:** Danbury, CT
UNITED STATES POSTAL SERVICE	**CASE NO:** N7C-1Q-C 21618
and	
AMERICAN POSTAL WORKERS UNION	

BEFORE: Daniel G. Collins **ARBITRATOR**

APPEARANCES:

For the U. S. Postal Service: Lloyd M. Roselle, Advocate

For the Union: Wayne F. Corriveau, National Business Agent

Place of Hearing: 23 Backus Avenue, Danbury, CT

Date of the Hearing: December 20, 1989

AWARD: The Postal Service violated the National Agreement when on February 7, 8 and 9, 1989 it assigned Letter Carrier craft employees, rather than Clerk craft employees, to forward mail. The Service shall pay to the Clerk craft employees on the overtime desired list on such dates equal shares of a total of 78 hours at the overtime rate.

Date of Award: January 3, 1990

Daniel G. Collins

(Signature of Arbitrator)

The Issue

The parties stipulated that the issue is whether the Postal Service violated Articles 3.5.7 and 100 15 of the National Agreements by assigning certain mail forwarding work to Letter Carriers at the Danbury, Connecticut GMF on February 7, 8 and 9, 1989 and if so, what shall be the remedy?

Facts

On January 30, 1989 the Stamford MSC initiated a new system for forwarding mail, which was designated Computer Forwarding System II ("CFS II"). Like the prior system, CFS I, the new system was staffed by Clerk Craft employees. The systems were mutually exclusive, i.e., because the new system used a seven digit code, in contrast to five digits in CFS I, the new system had to come on line as an instantaneous replacement for CFS I.

Immediately prior to the initiation of CFS II, there was no forwarding backlog at the Stamford MSC. Director of Field Operations Michael P. Boccio testified that after the first week of operation of CFS II, there was a five day backlog, which he termed "catastrophic" and which he said had generated an extraordinary number of customer complaints. Worse, he testified, was the fact that the backlog was increasing every day. Danbury Superintendent of Postal Operations Gregory R. Petrin testified that there were "a lot more" forwarding delays, and customer complaints after CFS II was initiated.

Jacqueline D. Cole, the Supervisor of the CFS I and CFS II units, testified that the backlog that developed under CFS II was attributable to machine failure, e.g., on January 30, 1989--the

first day of CFS II, only one of three machines was operable. Cole had believed there would be no problem implementing CFS II, because the new system was more efficient than CFS I. However, the implementation of CFS II had been delayed on earlier occasions, because of equipment problems.

Boccio testified that at the end of the first week of operation of CFS II it was clear that extraordinary actio had to be taken to deal with the increasing backlog. Both he and Cole testified that a very substantial amount of overtime was being worked in the CFS II unit; Cole believed that as a practical matter that unit could not handle more overtime. Boccio testified that given the situation there was only one alternative--to have the forwardinfg done on a temporary basis in the MSC's associated units. He further testified that the decision to have such work done locally by Letter Carriers, rather than Clerk Craft employees reflected a conclusion that the Letter Carriers were in a position to do such work much more efficiently than Clerks. On this point, he testified, Letter Carriers had up-to-date, personal familiarity with the forwarding requirements on their respective routes. In contrast, Clerks would have had to alphabetize, mail, check station forwarding cards, and then check individual Carrier lists for the most recent forwarding changes. Petrin testified that Letter Carriers each had to devote one-half to three quarters of an hour per day to such forwarding, while Clerks would have had to devote twice as long.

The present grievance involves the Danbury Post Office, where during the period February 7 through 9, 1989 Letter

Carriers performed 78 hours of overtime on forwarding tasks. There was no overtime for Clerks during that period; at the same time there were 65 or 66 Clerks on the overtime desired list.

The Parties' Positions

The Union argues as follows: The work of forwarding mail is expressly recognized as that of Clerks in the Standard Position Description for the Clerk position. The Letter Carrier Position Description also recognizes this fact. Not only was forwarding done by Clerks under CFS I, but it was also done prior thereto by Clerks in the Central Mark-Up Unit. There is nothing in the National Agreement that authorized the assignments at issue. Also, the Postal Service cannot validly claim that there was any emergency justifying using Letter Carriers on overtime. The Union cites numerous arbitrtion decisions it claims support of its position.

The Postal Service argues as follows: There was an emergency justifying assignment of overtime to Letter Carriers. In making that assignment the Service acted pursuant to Article 3F of the National Agreement.

Discussion

Article 3 provides in part as follows:

> ARTICLE 3
>
> MANAGEMENT RIGHTS
>
> The Employer shall have the exclusive right, subject to the provisions of this Agreement and consistent with applicable laws and regulations:
>
> . . .

> F. To take whatever actions may be necessary to carry out its mission in emergency situations, i.e., an unforeseen circumstance or a combination of circumstances which calls for immediate action in a situationwhich is not expected to be of a recurring nature.

Article 3 does not by its terms permit work assignments across craft lines. On the contrary, the management rights recognized in Article 3 are expressly made subject to the "Agreement" and "applicable...regulations." As noted above, in terms of applicable regulations the relevant position descriptions made it absolutely clear that forwarding mail is work of the Clerk craft. The conclusion that Article 3F does not in itself give the Service power to cross craft lines is reinforced by the fact that in Article 7, Section 2 of the National Agreement the parties expressly set forth the limited circumstances under which craft lines can be crossed, none of which existed in the situation at issue. In that connection it has been started in national level arbitration awards that "There is no reason to find the parties intended to give Management discretion to schedule across craft lines merely to maximize efficient personnel use." See Arbitrator Richard Miittenthal in Case H8C-2F-C 740 quoting Arbitrator Richard Block in Case H8S-SF-C 8027.

However, even assuming for purposes of argument that Article 3F permitted the crossing of craft lines in an emergency, and that such an emergency existed on February 7, 8 and 9, 1989, it still could not be concluded that such emergency necessitated use of Letter Carriers to do forwarding. On this point there is no dispute that Clerks were fully capable of doing that work, and

were available to do it.

Conclusions

For the foregoing reasons the Arbitrator will grant the grievance and order the Postal Service to pay the Clerks on the overtime desired list equal shares of a total of 78 hours at the overtime rate.

Dated: January 3, 1990

Daniel G. Collins, Arbitrator

AWARD OF ARBITRATOR

The Postal Service violated the National Agreement when on February 7, 8 and 9, 1989 it assigned Letter Carrier craft employees, rather than Clerk craft employees, to forward mail. The Service shall pay to the Clerk craft employees on the overtime desired list on such dates equal shares of a total of 78 hours at the overtime rate.

DANIEL G. COLLINS, Arbitrator

State of New York)
) ss.:
County of New York)

I, Daniel G. Colins, do affirm upon my oath as Arbitrator that I am the individual described in and who executed this instrument, which is my Award.

January 3, 1990
(Dated)

(Signature of Arbitrator)

REGULAR ARBITRATION PANEL

AMERICAN POSTAL WORKERS UNION, AFL-CIO	)	Grievant: Class Action
-and-	)	No.: G90C-4G-C-96024554
U.S. POSTAL SERVICE	)	P.O.: Morrilton, AR

BEFORE: Norman Bennett

APPEARANCES:

For the APWU: Rick Parrish
For the USPS: William V. Woods

DATE OF HEARING: June 8, 1999

LOCATION OF HEARING: Morrilton MPO

DATE OF AWARD: September 19, 1999

TYPE OF GRIEVANCE: Contract

CONTRACTUAL PROVISIONS: Article 7

CONTRACT YEAR: 1994-1998

Award Summary

The issue is whether Management violated Article 7 by making cross-craft assignments to the clerk craft. Management called in non-clerks before 8:00 a.m. on overtime to perform clerk duties. The clerks were not called in before their report times of either 8:00 a.m. or 8:30 a.m. Management contends that clerks were not available during an operational window. Assuming this to be a valid defense under Article 7, Management failed to prove it. It is necessary, however, to consider whether this defense is available under Article 7.

There is no contention that the two criteria for cross-craft assignments in Article 7.2.B and 7.2.C have been met. Instead, Management urges that an additional criterion be read into Article 7 by implication. National level awards hold that cross-craft assignments are permissible only under the two circumstances set forth in Article 7.2.B and 7.2.C. National awards on a specific issue are binding on that issue in Regional arbitration. And even if National awards were not binding, it appears that the parties set forth the two circumstances under

which cross-craft assignments are permitted in Article 7.2.B and 7.2.C.

The grievance is sustained. The parties agreed at the hearing that any remedy would only cover the period from August 1995 through October 1995. The Union seeks a cease and desist order and a monetary remedy. There is no need for a cease and desist order because the practice has ceased. As to a monetary remedy, evidence was adduced that the clerks for whom a remedy is sought had not signed the ODL. In this view, signing the ODL is not a precondition to eligibility for a monetary remedy under Article 7. If otherwise, what would prevent taking the position that Article 7 could be violated so long as nobody had signed the ODL.

In this opinion, the appropriate remedy in this case is pay to the affected employees at the overtime rate for the hours worked by non-clerks. Availability is relevant on the issue of which clerks are affected employees. The parties can address such issues on remand. The matter of the amounts due under the remedy stated above is remanded to the parties for determination. Jurisdiction is retained in the event a dispute arises as to the remedy.

Norman Bennett
ARBITRATOR

OPINION

The parties agreed at the hearing that the issue in this case is: "Did Management violate Article 7 of the Agreement by making cross-craft assignments to the clerk craft? If so, what shall be the remedy? Regarding possible remedy, the parties also agreed that any remedy would only cover the period from August 1995 through October 1995.

Factual Background

The Morrilton Post Office is a small facility. At times relevant to this case, one clerk had transferred to the Maintenance craft and had not been replaced. Consequently, there were four clerks at this office at the time. One of those clerks was a FTR, and the others were PTF's. The clerks reported to work at either 8:00 a.m. or 8:30 a.m. According to current-Postmaster D. Loftin, the Morrilton facility would have been understaffed with this compliment of clerks. At this office, some of the mail comes in on a truck from the Little Rock P&DC at 3:00 a.m. Most of the mail, however, comes in on a truck from the P&DC at 7:00 a.m.

Loftin became the Postmaster in Morrilton in 1996. Regarding the situation at the Morrilton Post Office before he became Postmaster, Loftin testified that he "couldn't attest to anything in 1995." However, he did testify as to the target times for getting mail to the letter carriers and the boxes after he became Postmaster. "The box time is 10:00 a.m.," Loftin stated. Further: "We try to case the mail to the carriers by 9:00 a.m., but occasionally, we go beyond 9:00 a.m. when we are working flats." Loftin also testified that the window for the clerks' processing mail is from 7:00 a.m. to 9:00 a.m.

During the relevant time period, the clerks were not called in before their report times. Instead, Management called in a rural carrier relief, custodian and letters carriers to perform clerk duties on overtime before 8:00 a.m. For example, the custodian was called in at 6:00 a.m. to perform clerk work. He would work at the level 5 rate, the clerk rate, before 8:00 a.m. and then go to the level 4 rate, the custodian rate, after 8:00 a.m. Loftin testified such practice rarely occurs at the Morriton Post Office at the present time.

The Class Action grievance in this case was filed at Step 1 on September 22, 1995. It claimed a violation of Article 7 by the cross-craft assignments. The remedy sought in the grievance was a cease and desist order and a monetary award based on the *cross-craft hours. The violation did not stop after the* grievance was filed but continued after that time. Management's position during the grievance procedure was that there was an "operational window" and that all available clerks were on duty when the non-clerks were performing clerk duties.

Discussion

Management contends in its brief that clerks were not available during an operational window. Assuming arguendo that this is a valid defense under Article 7, it would be an affirmative defense for which Management has the burden of proof. On this subject, Loftin was asked on cross-examination why clerks could not have been called in before 8:00 a.m. like was done with the non-clerks. Loftin's response was to speculate that "maybe they were maxed out on overtime." This speculation was that the *clerks would have been eligible for penalty overtime if they had* been called in before 8:00 a.m. On further questioning, however, Loftin conceded that he did not have knowledge of any of these facts.

It is obvious that findings of fact cannot be based on speculation like that provided by Loftin. Thus, it is apparent that Management failed to establish that clerks could not have been called in for overtime before 8:00 a.m. to meet the operational window as was done with the non-clerks. Stated another way, Management failed to prove the defense it asserts in this case. That would decide this case if availability within an operational window is a valid defense under Article 7. It is necessary, however, to consider whether the circumstance urged by Management permits cross-craft assignments under Article 7.

There is no contention that the two criteria for cross-craft assignments set forth in Article 7.2.B or 7.2.C were met. Instead, Management urges that an additional criterion be read into Article 7 by implication. On this subject, National arbitrator R. Block held in H8S-5F-C-8027 that assignments across craft lines are permissible under Article 7 only in the two situations set forth in Article 7.2.B and 7.2.C. When faced with this issue later, National arbitrator R. Mittenthal accepted the Block decision. National awards on a specific issue are binding on that issue in Regional arbitration.

Even if National awards were not binding, the parties demonstrated in Article 7 that they were quite capable of prescribing the conditions under which cross-craft assignments can be made. Moreover, the Overtime LMOU shows that the parties were equally capable in addressing the matter of operational window under Article 8. Nevertheless, the framers of Article 7 elected to set down only the circumstances articulated in Article 7.2.B and 7.2.C. Had the parties wished to create the exception urged by Management in this case, they obviously knew how to do that and would have done that. Along this same line, it seems reasonable to assume that the parties intended to exclude circumstances not stated in Article 7 by expressly setting forth the two criteria in Article 7.2.B and 7.2.C. The basis for

implying the standard urged by Management in Article 7 is not apparent.

Evidence was adduced at the hearing that the clerks for whom a monetary remedy is sought had not signed the ODL. In this regard, Management cites Regional award #A90M-4A-C-92005562 (Arbitrator T. Carey) in its brief. That award seems to suggest that issues arising regarding remedies in overtime-bypass cases under Article 8 are also applicable to monetary remedies in cross-craft assignment cases under Article 7. Like, whether an employee signed the ODL. Because of the language of Article 8, certain issues can arise under Article 8 with respect to remedies that do not arise under Article 7.

It is this view that signing the ODL is not a prerequisite to eligibility for a monetary remedy under Article 7. If otherwise, what would prevent taking the position that Article 7 could be violated so long as nobody had signed the ODL? It is doubtful that the framers of Article 7 had this in mind when they drafted that provision. Moreover, any such objection could be met by awarding straight time or lump-sum monetary remedy. Management's position in this case is that no monetary remedy is appropriate, not that straight time should be awarded instead of overtime.

One remedy sought by the Union is a cease and desist order. That is unnecessary because the practice has stopped. In this opinion, the appropriate remedy under the facts in this case is a monetary award. Specifically, pay to the affected employees at the overtime rate for the hours worked by the non-clerks. Availability is relevant on the issue of which clerks are affected employees. For example, an employee on extended sick leave during the time in question would not bean affected employee. The parties, however, can address such issues on remand. The determination of the amounts due under the remedy

set forth above is remanded to the parties. Jurisdiction is retained in the event a dispute arises as to the remedy.

REGULAR REGIONAL ARBITRATION PANEL

In the Matter of the Arbitration between	§	Class Action
UNITED STATES POSTAL SERVICE	§	McMinnville, TN
and	§	S4C-3F-C 36981
AMERICAN POSTAL WORKERS UNION, AFL-CIO	§	S4C-3F-C 40012

BEFORE ARBITRATOR
ERNEST E. MARLATT

APPEARANCES

For the U.S.P.S: Mr. Orvil R. Smith, MSC Director, Human Resources

For the Union: Mr. Mike Morris, National Business Agent

BACKGROUND OF THE CASE

The grievances came on for hearing before the undersigned arbitrator on August 21, 1989, at the Post Office, McMinnville, Tennessee. Post-hearing briefs were waived by the parties. The grievances involved the same issue and substantially the same facts, and were therefore consolidated for hearing.

The grievances allege that Part-Time Flexible Letter Carriers at the McMinnville Post Office were and are being assigned across craft lines to perform Clerk Craft work on a recurring basis, to the detriment of full-time clerks who would have been available to perform the work on overtime. Although the parties both agree that these cross-craft details had been going on for some time prior to the filing of the grievances, the Union is only seeking a remedy from Pay Period 14 of 1986, when the first grievance was filed, to the present.

The evidence indicates that the staffing at the McMinnville Post Office authorized 12 rural carriers, 9 full-time city carriers, 4 part-time carriers, 8 full-time clerks and 8 part-time clerks. At the time the grievance was filed, the office was short one full-time clerk and one part-time clerk. The incoming mail arrived at the office around 7:00 a.m. and it was necessary to have it distributed to the box section and the carriers for casing not later than 8:30 a.m. All of the part-time clerks and carriers reported in at 7:00 a.m. to work the distribution, and then would be released sometime between 9:00 and 11:00 after the mail was cased unless they were needed for other duties. The reporting time for the full-time clerks varied between 7:30 and 8:00 a.m. (earlier for those scheduled to work Saturday).

The Postmaster, Mr. Smartt, testified that about this time he had been directed by Mr. McCord of the Nashville Division to reduce overtime to a near-zero level. Because two of the clerk positions were vacant and other clerks were out on leave from time to time, he was faced with the choice of using PTF carriers to perform the morning distribution (which might violate the National Agreement), calling in additional full-time clerks on overtime (which he had been ordered not to do), or failing to meet service standards (which was unthinkable). Faced with this dilemma, and unable to get the additional manpower to fill the vacancies, Mr. Smartt testified that he did the only thing he could, using all his part-time employees wherever they were most needed regardless of craft lines. The cross-craft assignments were not exclusively into the clerk jurisdiction, and part-time clerks were also used to perform such carrier work as making collections.

The local President, Mr. Quillen Briggs, testified that he examined all of the Form 1336's and other official time records for the period of time in question, and calculated that carrier-craft employees were utilized for clerk-craft work for a total of 3,082.05 hours. The Postal Service did not dispute this figure.

Mr. Briggs also testified that during this time, full-time clerks worked little overtime except during the Christmas rush. Again, the Postal Service did not dispute this figure.

When the grievance reached step 2, Mr. Smartt did not comment on the merits but took the position that the Step 2 appeal was untimely. The Postal Service backed off of this contention at Step 3 and remanded the case to Step 2 "for further discussion and possible resolution. The parties should develop the facts as it [sic] relates to this issue and apply the applicable provisions of the National Agreement."

A second Step 2 hearing was held on October 30, 1986, at which time Mr. Smartt verbally stated that the Union had not "developed any additional facts" and that in his opinion the grievance was still untimely. This decision was never reduced to writing, and the Union moved the grievance back to Step 3 and ultimately to arbitration.

It is not necessary to discuss the procedural history of the second grievance, which substantially followed the same track and is also lacking a written Step 2 decision on remand.

DISCUSSION AND CONCLUSIONS

The Postal Service attempted to justify the crossing of craft lines by reference to Article 7.2 of the National Agreement, and in particular, subparagraph C of that Section:

Section 2. Employment and Work Assignments

A. Normally, work in different crafts, occupational groups or levels will not be combined into one job. However, to provide maximum full-time employment and provide necessary flexibility, management may establish full-time schedule assignments by including work within different crafts or occupational groups after the following sequential action has been taken:

1. All available work within each separate craft by tour has been combined.

2. Work of different crafts in the same wage level by tour has been combined.

The appropriate representatives of the affected Unions will be informed in advance for the reasons for establishing the combination full-time assignments within different crafts in accordance with this Article.

B. In the event of insufficient work on any particular day or days in a full-time or part-time employee's own scheduled assignment, management may assign the employee to any available work in the same wage level for which the employee is qualified, consistent with the employee's knowledge and experience, in order to maintain the number of work hours of the employee's basic work schedule.

C. During exceptionally heavy workload periods for one occupational group, employees in an occupational group experiencing a light workload period may be assigned to work in the same wage level, commensurate with their capabilities, to the heavy workload area for such time as management determines necessary.

The landmark decision at the National level concerning Article 7 was written by Arbitrator Rich Bloch, case A8-W-656. He found that the employer had a heavy burden of proof to justify crossing of craft lines, in these words:

> Taken together, these provisions [i.e., Article VII, Section 2, of the 1978 National Agreement, now Article 7.2 of the 1984 National Agreement quoted above] support the inference that management's right to cross craft lines is substantially limited. The exceptions to the requirement of observing the boundaries arise in situations that are not only unusual but also reasonably unforseeable. There is no reason to find that the parties intended to give management discretion to schedule across craft

> lines merely to maximize efficient personnel use; this is not what the parties have bargained. That an assignment across craft lines might enable management to avoid overtime in another group, of course, is not by itself a contractually sound reason. It must be shown either that there was "insufficient work" for the classification, or alternatively, that work was "exceptionally heavy" in one occupational group and light, as well, in another.

This view of Article 7.2 has been followed almost unanimously by arbitrators, and I am omitting reference to numerous citations by the Union because the principle is too well-established to be challenged at this date. There is no evidence whatsoever in this case that there was "exceptionally heavy work" in the clerk craft coupled with a corresponding "light workload" in the carrier craft at any given time during the entire three-year period involved in the grievance, nor did it appear that any employee had "insufficient work on any particular day." The evidence, on the contrary, indicates that all crafts and all employees, both full-time and part-time, were struggling to keep up with the workload all the time because of the fact that the office was short-handed and the fact that the incoming mail did not arrive until 7:00 a.m. (recently, by the way, moved up to 6:00 a.m. to allow more realistic processing time). The problem, far from being "unforseeable," was chronic.

Mr. Smartt, with perhaps more honesty and candor than he should have displayed, indicated that he refused to settle the grievance because he thought it unethical for employees to demand to be paid for not working. I am not entirely unsympathetic with his position, and my prior awards will show a strong aversion to featherbedding as, for example, when the Union tries to turn the Postal Service into a rest home for employees who are too lazy or too incompetent to learn to key a Letter Sorting Machine for which they were hired. But in this case, the employees are not being paid "for not

working." They are being paid because the Postal Service deliberately assigned their work to other employees who would not be drawing overtime pay.

One last argument raise by the Postal Service in this case is the contention that the cross-craft assignments at the McMinnville Post Office had gone on for years prior to this grievance and that such assignments therefore constituted an acceptable "past practice." It would suffice to exclude this argument by pointing out that it was never alleged at Step 2 or Step 3, but I will briefly discuss the issue since it was raised.

There is a difference of opinion among arbitrators whether past practice may ever be relied upon to override contract language which is clear and unambiguous. Arbitrator Robert Foster came down squarely on the negative of this issue (S1C-3W-C 17074):

> The evidence of prior practice was uncertain as to the circumstances under which the Employer had utilized PTF carriers in the clerk craft during the Christmas rush. *But, in any event, even a clear pattern of past practice cannot serve to alter the clear and unambiguous contract language of Article 7, Section 2, that limits the crossing of crafts to the conditions specified in the National Agreement.* [Emphasis supplied]

In the minority view which allows past practice to override explicit contract language, the tendency is often to give greater weight to past practice which confers upon employees some benefit to which they are *not* entitled under the contract than to past practice which deprives employees of some benefit to which they *are* entitled. This does not necessarily indicate that arbitrators have an anti-management bias (although some undoubtedly do), but is rather a reflection of the fact that extra benefits are voluntarily bestowed by management whereas the denial of contract rights may simply indicate the inability of the union to do anything effectively to stop the practice. Thus, the key to the effect to

be given to past practice is whether or not it reflects a mutual agreement either to interpret unclear and ambiguous language in the contract or deliberately to change and deviate from language which is clear and unambiguous.

In this case, there is no indication that the Union voluntarily consented to the routine assignment of clerk-craft work to the letter carriers. The facts indicate that the issue became troublesome only when the Postmaster was ordered to restrict overtime so severely that the cross-craft assignments began to impact on the paychecks of the regular full-time clerks. The Union cannot be expected to grieve every contract violation which has a minimal effect on its members; indeed, the Postal Service would feel that a flood of insignificant grievances would show a poor attitude on the part of the Union to improve labor-management relations. Thus, I find nothing in the record to indicate that the parties at McMinnville knowingly and deliberately agreed to disregard Article 7.2 insofar as it applied to that installation.

The Union's assertion that its full-time employees were deprived of 3,082.05 hours of overtime work in violation of the National Agreement starting with Pay Period 14 of 1966 is therefore unrebutted. I am appalled at the magnitude of this claim, involving the payment of two employees for each of such hours, but the Step 3 designee for the Postal Service apparently understood what was at stake when the parties remanded the grievances to Step 2 for "further discussion and possible resolution" which should have given a clear signal to the Postmaster to cut his losses and settle before the amount of the damages became "humongous," as the Postal advocate put it at the hearing. I find nothing to indicate that

the Union was dilatory in moving the grievance to arbitration or was otherwise responsible for the delay during which the costly violations continued to accrue. Therefore, I see no equitable basis to mitigate the penalty which must be charged to the Postal Service for such violations.

As Arbitrator Robert P. Grabb observed, in a similar case involving an award of 1500 hours of improper cross-craft assignments (C1C-4J-C):

> The arbitrator does not wish to have his award turn into a gross fortuitous windfall for clerks who worked full time and overtime at a negotiated wage, and yet the management at the Waukesha Post Office must be made to realize that it carried on a blatant program of violations of the Agreement for an extended period. . . .The Arbitator concludes that equity will best be done to both Parties by granting an arbitrary number of hours to be paid to the clerks on the overtime desired list during the period involved.

AWARD

The full-time clerks on the Overtime Desired List at the McMinnville Post Office shall be paid a total of 3,082.05 hours at overtime rates then in effect, pro-rated equally to each pay period from PP 14 of 1986 through PP 18 of 1989, and divided equally among all such clerks on the list as of each pay period.

This remedy is cumulative of and in addition to the remedy awarded in companion case S4C-3F-C 29645 rendered by me on August 24, 1989.

Ernest E. Marlatt
Arbitrator
P. O. Box 130199
Houston, TX 77219

August 26, 1989.

ATTACHMENT # 13

REGULAR ARBITRATION PANEL
SOUTHERN REGION

Arbitration in the Matter of UNITED STATES POSTAL SERVICE, Employer, and AMERICAN POSTAL WORKERS UNION, AFL-CIO, Union.	GRIEVANT: Class Action POST OFFICE: Bedford, Texas CASE NO: S4C-3A-C 26194

BEFORE PATRICK HARDIN, ARBITRATOR

APPEARANCES:

For United States Postal Service:

William D. Jackson
Labor Relations Assistant

For American Postal Workers Union:

Rudy Perez, Jr.
National Business Agent

HEARD: at Bedford, Texas, on February 28, 1989.

AWARD:

Management violated Article 7, Section 2(C), of the National Agreement by assigning a carrier craft employee to perform 30 hours of clerk craft duties February 1 through 5, 1986, at the Bedford, Texas, Post Office. Management shall cease and desist from such assignments and, as further specified, make whole employees in the clerk craft.

DATED: this July 8, 1989, at Knoxville, Tennessee.

PATRICK HARDIN, ARBITRATOR

HEARING

This matter was heard by the arbitrator on February 28, 1989, at Bedford, Texas. The parties appeared as shown above and were afforded full opportunity to present evidence and argument. At the conclusion of the hearing, the parties waived closing argument and agreed to submit and exchange post-hearing briefs. The arbitrator took the matter under consideration on March 28, 1989, when the briefs of the parties were received.

ISSUE SUBMITTED

The parties did not agree on a formal statement of the issue submitted for resolution by the arbitrator. After considering the evidence and argument, and the briefs of the parties, the arbitrator deems the issue to be:

> Did the postal Service violate Article 7, Section 2(C), of the National Agreement by assigning a part time flexible letter carrier to perform clerk craft duties between February 1 and 5, 1986? If so, what should be the remedy?

RELEVANT CONTRACT PROVISIONS

Articles 3, 7, and 15 of the 1984 National Agreement between the parties are relevant to the resolution of this matter.

FACTS

On January 4, 1986, at Bedford, Texas, the Postal Service reemployed Alan Shoemaker. Mr. Shoemaker had been a

letter carrier in California in his prior Postal Service employment. He applied at Bedford for any available position and was hired into an available clerk craft position with the understanding that he would be transferred to the carrier craft at an early opportunity. For that reason, he was not trained on a mail distribution scheme, but was assigned to perform mail preparation duties.

Postmaster Tony Reichert transferred Shoemaker to the carrier craft effective February 1, 1986. On that date, however, Shoemaker had not completed all the paperwork to qualify for a SF-46 permit to operate postal vehicles and could not be assigned any duties that required the operation of postal vehicles. For that reason, Postmaster Reichert assigned Shoemaker to continue the mail preparation duties he had performed as clerk. Shoemaker performed 30 hours of such mail preparation work between February 1 and 5, 1986. On February 5, for the first time, he was assigned to perform letter carrier craft duties.

The Union filed this grievance to protest the assignment of clerk craft duties to an employee not in the craft. The matter was not resolved in the grievance procedure and is now properly before the arbitrator.

POSITION OF THE POSTAL WORKERS UNION

The National Agreement is quite clear that cross-craft assignments are allowed only under the conditions stated in Article 7, Section 2. Paragraphs A and B of Section 2 are not relevant. Paragraph C allows such assignments only to

the extent that employees in a craft with an unusually light work load may be assigned to assist employees in a craft with an unusually heavy work load. Those conditions were not met in this case and the assignment of Mr. Shoemaker to perform 30 hours of clerk craft duties violated the National Agreement. The grievance should be sustained and the Postal Service directed to pay 30 hours' pay to clerk craft employees who were adversely affected.

POSITION OF THE POSTAL SERVICE

The Union has made allegations that Mr. Shoemaker took work away from the Clerk craft. However, the record reflects that not one Clerk, Regular or PTF, received less than 40 hours the week in question. The record indicates three Clerks used sick leave and two used annual leave which gave them 40 plus hours for the week. The record also indicates that Casuals also worked almost 18 hours that week. The assignment did not deprive the Clerk craft of any work. The Union has failed to prove any violation of Agreement.

ANALYSIS AND CONCLUSIONS

The evidence leaves no doubt that the assignment of 30 hours of clerk craft duties to Mr. Shoemaker was not authorized by Article 7, Section 2(C). That Section says (Jt. Ex. 1):

> C. During exceptionally heavy workload periods for one occupational group, employees in an occupational group experiencing a light workload period may be assigned to work in the same wage level . . . to the heavy workload area for such time as management determines necessary.

The plain words of the provision impose two conditions: an "exceptionally heavy workload period" in the assisted group and a "light workload period" in the assisting group. Because it is clear that at least one of the two conditions was not met, the grievance must be allowed.

The Postal Service actually argued that the "workload period" in the clerk craft could be called "exceptionally heavy" based on evidence that every regular employee worked or was paid for at least 40 hours in the week. If that argument were dispositive, I would reject it. It amounts to the argument that every normal week is an "exceptionally heavy workload period." The drafters of Article 7 could not have used those words to such idle purpose.

Even if the argument had merit, however, it would not assist the Postal Service position in this case. The evidence revealed that the workload in the carrier craft was heavier than in the clerk craft for the week in question. Thus, if the clerk craft was experiencing an "exceptionally heavy workload period" the carrier craft was also, and in spades! In that event, the carrier craft could not become the assisting craft under Section 2(C). That Mr. Shoemaker would have been underutilized -- or even idle -- in the carrier craft does mean that the carrier "occupational group" was "experiencing a light workload period."

The question of the appropriate remedy is as difficult as the question of violation is plain. Not even the Union denies that Postmaster Reichert had good reason for what he

did. Mr. Shoemaker's delay in qualifying for the SF-46 was not foreseeable or foreseen. When the delay occurred, Postmaster Reichert acted with the best of intentions to make efficient use of the work force and to move the mail on time. He did not intend to deny any opportunity to any clerk craft employee. His testimony at the hearing revealed his continuing belief, held in the best of faith, that he did not do so. Even so, the remedy sought by the Union is appropriate and must be awarded.

At bottom, the Postal Service defense of this grievance rests on the claim that Mr. Reichert's decision to assign clerk craft duties to a carrier promoted the efficiency of the service. Although Article 3 empowers and commands Management "to maintain the efficiency of the operations entrusted to it," that efficiency must be sought "subject to the provisions of [the] Agreement. . . ." (Id.). As Article 7 plainly reveals, the Agreement protects values and interests in addition to efficiency of operations, including some interests and values that impair efficiency. The preservation of the historic craft patterns in Postal Service employment involves both some gains in efficiency from specialization and enhancement of skills, and some losses in efficiency from the divisions of tasks among the craft groups. In this case, the policies of Article 7 that preserve the craft lines required Mr. Reichert either to give a less efficient assignment to Mr. Shoemaker -- casing mail on routes with which he was unfamiliar, perhaps -- or

to give him the most efficient assignment at the cost of violating the contract. Mr. Reichert made the latter choice in all good faith, but the contract violation is patent and palpable.

In this case, the violation of contract rights should be remedied through the standard means. Among the many good reasons for the remedy, it will serve as a modest deterrent to like violations. Accordingly, I will impose the remedy requested by the Union: three hours' pay to each of 8 clerks on the overtime desired list for the first quarter of 1986, and two hours' pay to each of three part time flexible clerks who worked less than 8 hours on February 5, 1986, all as shown on Union Exhibits 2 and 4.

AWARD

The grievance is allowed. Management violated Article 7, Section 2(C), of the National Agreement by assigning a carrier craft employee to perform 30 hours of clerk craft duties February 1 through 5, 1986, at the Bedford, Texas, Post Office. Management shall cease and desist from such assignments and make whole the following clerk craft employees by payment to them of the current straight time rate for the indicated hours:

Name	Hours
Fennel	3
Hall	3
Johnson, R.	3
King	3

Norwood	3
Phillips	3
Rainey	3
Wallace	3
Johnson, Y.	2
Simpson	2
Taylor	2

The arbitrator retains jurisdiction for the limited purpose of resolving any dispute concerning the implementation of this Award.

Patrick Hardin
Arbitrator

Knoxville, Tennessee
July 8, 1989
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REGULAR ARBITRATION PANEL

In the Matter of the Arbitration	**GRIEVANT:** Charlene Hall
Between	**POST OFFICE:** Lincolnton Station, New York, NY
UNITED STATES POSTAL SERVICE	
and	**CASE Numbers:** **USPS:** A98C-1A-C 99235998 **APWU:** NY99358N
AMERICAN POSTAL WORKERS UNION, AFL-CIO	

BEFORE: Sherrie Rose Talmadge, Esq., ARBITRATOR

APPEARANCES:

For the U.S.P.S.:	Valerie E. Rooks, Labor Relations Specialist
For the Union:	Peter Coradi, National Business Agent
Place of Hearing:	350 West 31st Street, New York, New York
Date(s) of Hearing:	April 4, 2000
Date of Award:	June 20, 2000
Relevant Contract Provisions:	Articles 1, 5, 7, 8, 13, 19 and 37
Contract Year:	1998 - 2000
Type of Grievance:	Contract – crossing crafts

AWARD SUMMARY

The grievance is granted in part, and denied in part. The Service violated the National Agreement by permitting a part-time flexible carrier to perform clerk craft duties at Lincolnton Station for approximately two hours on June 23, 1999. For the remainder of the period in question, there was no contractual violation. For the remedy, the Postal Service should pay Steward Hall a total of one hour and 96 units at straight time pay.

Sherrie Rose Talmadge

Sherrie Rose Talmadge, Arbitrator

STATEMENT OF THE ISSUES

The parties proposed different issues, and left the framing of the issue to the discretion of the Arbitrator. The Service's first issue was very similar to the Union's issue, however the Service proposed the additional issue that was addressed as part of the discussion[1]. Consequently, I adopted the following issue proposed by the Union:

1. Did the Service violate the National Agreement by permitting a part-time flexible letter carrier perform clerk craft duty at Lincolnton Station during the period of June 23, 24, 25, 26 and 29, 1999?

2. If so, what is the appropriate remedy?

RELEVANT CONTRACT ARTICLES

Article 13.4. General Policy Procedures

A. Every effort shall be made to reassign the concerned employee within the employee's present craft or occupational group, even if such assignment reduces the number of hours or work for the supplemental work force. After all efforts are exhausted in this area, consideration will be given to reassignment to another craft or occupational group within the same installation.

C. The reassignment of a full-time regular or part-time flexible employee to a temporary or permanent light duty or other assignment shall not be made to the detriment of any full-time regular on a scheduled assignment or give a reassigned part-time flexible preference over other part-time flexible employees.

D. The reassignment of a full-time regular or part-time flexible employee under the provisions of this Article to an agreed-upon light duty temporary or permanent or other assignment within the office, such as type of assignment, area of assignment, hours of duty, etc., will be the decision of the installation head who will be guided by the examining physician's report, employee's ability to reach the place of employment and ability to perform the duties involved.

FINDINGS OF FACT[2]

Charlene B. Hall, the Grievant, has been a distribution clerk with the Service for 33 years, 23 years at Lincolnton Station, and has held the position of APWU steward for the past nine years. Hall testified that the duties of the clerk craft include working in the "red ink section" where mail that is to be returned to sender is canceled out either by machine or by hand stamp.

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[1] The Service proposed the following issues:
1. Did Management violate the National Agreement when a light duty carrier is alleged to be performing clerk work during June 23, 24, 25, 26 and 29, 1999?
2. If the light duty carrier was performing clerk work, how was the contract violated?
3. If so, what is the remedy?

[2] The parties had an opportunity to present direct and cross-examination of the sworn witnesses, and to submit relevant documentary evidence. At the conclusion of the hearing,

During the morning of June 23, 1999, Hall clocked out for one hour and 96 units to attend to Union business. Upon her return to the office, shortly before noon, Hall noticed that a bucket of mail from the red ink section where she had been working was gone. Hall then observed part-time flexible letter carrier Poledore sitting in the office with buckets of mail from the red ink section processing the mail. When Hall inquired what the carrier was doing; Supervisor Kane returned the buckets of red ink mail from the office to the section where Hall had been working.

The parties stipulated that PTF carrier Poledore had been on light duty during the period June 23 through June 29, 1999. They further stipulated that PTF carrier Poledore was not present to testify because she had resigned from the Service on January 3, 2000.

Manager Hamm testified that Poledore had been assigned to light duty in the office to accommodate her medical restrictions because of her high-risk pregnancy. Her medical restrictions indicated that she was to alternate sitting and standing, and could not stand for extended periods. Although Poledore had briefly attempted to deliver mail on the streets on June 23, she had returned and informed the Manager that she was physically incapable of doing so at that time because she could not endure prolonged standing.

Hamm testified that in order to accommodate Poledore while on light duty, he assigned her the carrier job duty of processing undeliverable mail. Because of staffing problems during that last week of June 1999 (it was peak vacation period, two carriers were on AWOL and two were injured or on disability), there was a backlog of undeliverable mail. Poledore had difficulty casing mail because she had trouble reaching up. Hamm testified that he brought her to the office to handle carrier mail and answer the phone. While in the office, Poledore worked on undeliverables and "beats". "Beats" refers to the mail of customers who have moved from a particular route but the Service is not certain of their change of address. When a carrier returns mail to the office, it must be given a disposition and the carrier attempts to match the "pink" change of address cards with the mail piece. Hamm noted that this does not have to be done at the carrier's case. Hamm emphasized that Poledore was performing carrier work because this work needed a disposition, and that absolutely no work was taken from the clerk craft. Once a carrier gives a disposition to the mail, and they determine whether the mail can be forwarded, the carrier initials and places a date and route number on the

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the parties presented oral closing arguments.

piece and forwards it to the clerks. Undeliverables can also be corrected with another zip code, and are then given to the clerks to case.

Supervisor of Customer Services Deloris Downing testified that during the period June 23 through 29, 1999, Hall had reported to her that Poledore was crossing crafts. Downing testified that Manager Hamm had given Poledore carrier work to perform. In the office, Downing observed her correct apartment numbers, cross out bar codes and work on "beats".

Hall had testified that it would be inaccurate for Poledore to verify "beats" in the office. Hall pointed out that to accurately verify beats, Poledore would have had to be sitting next to the carrier whose route she was working on. Hall also observed that Poledore began work at 10:00 a.m., unlike the other carriers who began their tours at 7:00 a.m.

During the period from June 23 through June 29, 1999, Hall, who was on the OTDL, did not work overtime. Hall did work her regular eight-hour days. While on light duty, Poledore worked less than forty hours and did not work overtime.

POSITIONS OF THE PARTIES

UNION'S POSITION

The Union argued that the Service violated Articles 1, 5, 7, 8, 13, 19 and 37 of the National Agreement when management assigned carrier Poledore to perform clerk duties at Lincolnton Station. Hall, a long-term employee, credibly testified to having observed Poledore perform red ink section duties that have been the customary duties of the clerk craft, and on the first day Kane returned the clerk work to Hall. Although Manager Hamm testified that Poledore had a high-risk pregnancy and had to alternate sitting and standing, the Service produced no medical documents that supported this assertion. The Service claimed that Poledore was not performing clerk duties, however the Service did not submit a written statement from Poledore detailing the work that she had performed.

Pursuant to Article 13.4.C, the reassignment of the PTF to a permanent light duty assignment should not have been made to the detriment of Hall, a full-time regular with a scheduled assignment. Consequently, when Poledore performed clerk duties, Hall, who was on the OTDL, should have been allowed to perform the clerical work on overtime. It was not necessary for Poledore to perform work outside her craft. The Union cited to a number of arbitral decisions, including a 1994 Mittenthal case in which he notes that Article 1, Section1 bars assignments of one craft to another to protect the integrity of the

crafts – the "customary way of doing things becomes the contractually right way". To remedy the contractual violation, the Union requested that the Grievant be paid 20 hours of overtime.

POSTAL SERVICE POSITION

The Service argued that the Union did not meet its burden of proving that Poledore performed clerk work. Manager Hamm testified that as a result of Poledore's pregnancy she was on light duty working on beats with undeliverable mail. At the end of June 1999 the station was in midst of peak vacation period, and two carriers were AWOL and two carriers were on disability. Consequently there was a backlog of undeliverable mail and beats. Poledore had difficulty standing because of her pregnancy, and was not able to work at full capacity. This was a small station and it would have been problematic to have two people work at the case. In the office Poledore was able to compare the pink change of address cards and the necessary mail to do the job. Letter carriers do cross off incorrect zip codes or bar codes. Manager Hamm credibly testified that Poledore never performed clerk work. While being accommodated, Poledore did not work her full eight hours or overtime.

The Service contended that in accordance with Article 13.1.A every effort was made to reassign her in the carrier craft. The Service asserted that even if Poledore had performed clerk work, pursuant to Article 13.4.A, the Service was allowed to assign her clerk work, if necessary, in order to accommodate an employee on light duty. Moreover, no work was taken from anyone.

The Service pointed out that there was no basis for the Union's requested remedy because Poledore did not perform clerk work, or overtime. Consequently, the Service urged a denial of the grievance.

DISCUSSION

At issue is whether the Service assigned light duty letter carrier Poledore to perform clerk duties in violation of the National Agreement. To address this issue there must be an examination of whether Poledore performed any clerk duties and, if so, whether the language of Article 13.4.A permitted her performance of those duties.

It has been well established that the unions may properly invoke Article 1, Section 1 "to protect the basic integrity ..." of their respective "separate craft units..." This means that "existing regular work assignments" may not be transferred from one craft to another and must ordinarily remain within the craft to which they have

customarily been assigned. [Arbitrator Mittenthal, in his National panel decision USPS and APWU and NALC, Case Nos. H7S-3A-C 24946 (1994)].

In the present case the Union asserted that Poledore was performing clerk duties when she worked on mail from the 'red ink section' canceling out return to sender mail. I credit Steward Hall's testimony that on June 23, 1999 from 9:50 a.m. until just before noon (1 hour and 96 units) while Hall had been at the Union office, Poledore had been performing the clerk duties of canceling out return to sender mail. Hall, a distribution clerk at Lincolnton Station for 23 years, and steward for the past nine years, testified that canceling out return to sender mail customarily and historically has been clerk duties. On June 23, Hall observed the light duty carrier in the office with the buckets of red ink section mail and specifically questioned Poledore about what she was doing. As soon as Hall returned to her workstation, Supervisor Kane returned to Hall those buckets of return to sender mail that Poledore had been working with. Thus, I find that when Poledore was canceling out return to sender mail from the red ink section she was performing clerk duties.

I note that this finding is factually distinguishable from the recent December 19, 1999 decision by Arbitrator Joseph S. Cannavo, Jr., [Case No. A90C-4A-C 96074297] involving the same parties at Lincolnton Station, in which he found that the Union failed to establish a violation of the National Agreement which permits management to assign light duty employees to other crafts. In that case, Cannavo held that the non-carrier work assigned to a light duty employee was supervisory work, and not clerk work. There was no assertion that Poledore was performing supervisory work in the instant case.

Nonetheless, I do not find that the Union was able to substantiate its assertion that Poledore continued to perform clerk duties for the remainder of the five days in question. The morning of June 23 was the only period for which Hall offered testimony about her direct observations of Poledore's work. For the remainder of the period, I credit Manager Hamm's testimony that she had assigned Poledore only carrier work – performing "beats" using the pink change of address cards, while working in the office. Although Hall testified that Poledore could not have accurately verified "beats", in the office away from the carrier cases, I do not find this testimony dispositive of whether the work could be accomplished in the office. Neither carrier Poledore nor supervisor Kane was available to testify at the hearing.

The next level of analysis is whether the Service was entitled to assign the light duty carrier to work in the clerk craft on June 23, 1999. Article 13.4.A states that:

> A. Every effort shall be made to reassign the concerned employee within the employee's present craft or occupational group, even if such assignment reduced the number of hours of work for the supplemental work force. After all efforts are exhausted in this area, consideration will be given to reassignment to another craft or occupational group within the same installation.

I find that Article 13, Section 4.A permits the assignment of an employee on light duty to another craft only after every effort is made to reassign the employee within the employee's present craft. Manager Hamm testified that the office was short staffed at that time and there was a pressing need for the carrier work handling undeliverables – "beats" - to be performed. Therefore, on June 23 when Poledore was initially given the red ink section mail, that was customarily clerks' duties, the Service did not make every effort to reassign her duties within the carrier craft.

Consequently, I find that the Service violated the National Agreement for the period of approximately 1 hour and 96 units of time that Poledore performed clerk duties, despite the available carrier work. As for the remedy, the Service did not work Clerk Hall on overtime during June 23 through 29, 1999, although she was on the OTDL. Because overtime was not needed, overtime pay would not be an appropriate remedy. However, the cross-craft assignment of carrier Poledore was a violation of the National Agreement and she performed work that should have been performed by a distribution clerk. The distribution clerks were injured by the violation and there was no way to get that work back.[3] Accordingly, the appropriate remedy is to pay 1 hour and 96 units at straight time rate to Hall.

AWARD

The grievance is granted in part, and denied in part. The Service violated the National Agreement by permitting a part-time flexible carrier to perform clerk craft duties at Lincolnton Station for approximately two hours on June 23, 1999. For the remainder of the period in question, there was no contractual violation. For the remedy, the Postal Service should pay Steward Hall a total of one hour and 96 units at straight time pay.

Respectfully submitted by:

Sherrie Rose Talmadge

Sherrie Rose Talmadge, Arbitrator

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[3] Arbitrator Mittenthal granted a similar remedy in USPS and APWU, [Case No. H8C-2F-C 7406 (1982)], when he held that a mail handler was assigned distribution clerk duties, and there was no evidence that even if that had not occurred, the clerks would have been called in to perform overtime.

ATTACHMENT # 15

Regular Arbitration Panel

In the Matter of Arbitration	)	**Grievant: Class Action**
Between	)	
United States Postal Service	)	**Post Office: Bowling Green, Ohio**
and	)	
American Postal Workers Union	)	**Case No: C90C-4C-C94014549**
		CC1 - 70-93

Before: Michael E. Zobrak, Arbitrator

Appearances:

For the Postal Service: Janice Hussey, Labor Relations Specialist
For the Union: Greg See, Director Maintenance Craft

Place of Hearing: Bowling Green, Ohio

Date of Hearing: May 8, 1997

Date Of Award: May 29, 1997

Relevant Contract Provisions: Articles 1, 7, 19 and Memorandum

Contract Year: 1990

Type of Grievance: Crossing of Crafts

Award Summary

The Postal Service violated the terms of the National Agreement at the Bowling Green, Ohio Post Office when it scheduled rural carrier associates (RCAs) to perform clerk work. RCAs are excluded under the terms of the National Agreement from performing work across craft lines. Lacking a dual appointment to perform work in other crafts, the use of RCAs to perform clerk work cannot be justified by shortages in the number of clerk craft employees available or the need to meet certain windows. The remedy is set forth in detail herein and the undersigned retains jurisdiction to resolve any disputes arising out of the calculation of the remedy.

Michael E. Zobrak

Michael E. Zobrak, Arbitrator

ADMINISTRATION

By letter of March 20, 1997, the undersigned was notified of his appointment by the parties to hear and decide a matter then in dispute between them. A hearing went forward on May 4, 1997, where both parties presented testimony, written evidence and arguments in support of their respective positions. The record was closed at the conclusion of the hearing and this matter is now ready for final disposition.

GRIEVANCE AND QUESTION TO BE RESOLVED

On May 21, 1993, the following grievance (Joint Exhibit 2) was filed:

Rural carriers (relief) doing clerk work.

The question to be resolved is did the Postal Service violate the terms of the National Agreement when it scheduled rural carriers associates to perform clerk work? If so, what should the remedy be?

CITED PORTIONS OF THE AGREEMENT

The following portions of the Agreement (Joint Exhibit 1)were cited:

ARTICLE 1
UNION RECOGNITION
(1978 National Agreement)

Section 1. Unions

A. The Employer recognizes each of the Unions designated below as the exclusive bargaining representative of all employees in the bargaining unit for which each has been recognized and certified at the national level.

National Association of Letter Carriers, AFL-CIO --City Letter Carriers
American Postal Workers Union, AFL-CIO--Maintenance Employees
American Postal Workers Union, AFL-CIO--Special Delivery Messengers
American Postal Workers Union, AFL-CIO--Motor Vehicle Employees
American Postal Workers Union, AFL-CIO--Postal Clerks
National Post Office Mail Handlers, Watchmen, Messengers and Group Leaders Division of the Laborers' International Union of North America, AFL-CIO--Mail Handlers

B. The Employer recognizes the American Postal Workers Union, AFL-CIO--National Post Office Mail Handlers, Watchmen, Messengers, and Group Leaders Division of the Laborers' International Union of North America, AFL-CIO, as the exclusive bargaining representative of all

employees in the Mail Bag Depositories, Repair Centers and Area Supply Centers [Case Nos. 5-RC-8575(P), formerly 22-RC-5127(P), and 5-RC-8576(P), formerly 22-RC-5129(P).]

Section 2. Exclusions. The employee groups set forth in Section 1 above do not include, and this Agreement does not apply to :

1. Managerial and supervisory personnel;
2. Professional employees;
3. Employees engaged in personnel work in other than a purely non-confidential clerical capacity;
4. Security guards as defined in Public Law 91-375, 1201(2);
5. All Postal Inspection Service employees;
6. Employees in the supplemental work force as defined in Article VII; **or**
7. **Rural Letter Carriers.**

MEMORANDUM OF UNDERSTANDING
BETWEEN THE
UNITED STATES POSTAL SERVICE AND
THE JOINT BARGAINING COMMITTEE
(National Association of Letter Carriers, AFL-CIO and
American Postal Workers Union, AFL-CIO)

Re: Article 7, 12 and 13 - Cross Craft and Office Size

A. It is understood by the parties that in applying the provisions of Articles 7, 12 and 13 of the 1990 National Agreement, cross craft assignments of employees, on both a temporary and permanent basis, shall continue as they were made among the six crafts under the 1978 National Agreement.

FACTUAL BACKGROUND

Faced with a shortage of seven (7) clerks during portions of 1993, the Postmaster of the Bowling Green, Ohio Post Office assigned Rural Carrier Associates (RCAs) to perform clerk duties. The first truck load of daily mail arrived at the Bowling Green Post office at 4:00 a.m. A second truck arrived as 6:20 a.m. Distribution clerks began to report for work at 4:00 a.m. The Post Office had a 9:00 a.m. to 9:30 a.m. target for the distribution of mail into boxes.

The RCAs were used to cancel mail that had been placed in pick-up boxes after the last pick-up of the prior day. They placed mail on the ledge for the carriers to sort. The RCAs also were assigned to distribute the mail into the boxes. Most of the letter carriers reported for work between 7:00 a.m. and 7:30 a.m. According to the Postmaster, eighty (80) percent of the mail had to be ready for letter carrier sorting when they reported for work.

Five window clerks reported for work between 8:00 a.m. and 8:30 a.m. The Postmaster maintains that the window clerks were not asked to come in earlier and work overtime since they

did not sign the overtime desired list. He simply felt that he could not force the clerks who did not want to work overtime to report at the earlier hour for overtime work.

The instant grievance was filed to protest the use of the RCAs to perform clerk duties. Currently the number of clerks working at the Bowling Green, Ohio Post Office stands at fourteen (14). The RCAs were subsequently given dual appointment status, which allows them to be worked as casual employees.

CONTENTIONS OF THE PARTIES

UNION CONTENTIONS

The Union contends that the use of the RCAs to perform clerk duties violated the terms of the Agreement. Rural carriers are barred under the terms of the National Agreement from performing clerk craft duties. There were clerks normally scheduled to work beginning between 8:00 a.m. and 8:30 a.m., who could have been directed to work overtime by reporting for work as early as 4:00 a.m. If the Postmaster needed to use the RCAs to perform clerk duties, he should have obtained a dual appointment for them. By so doing they could have been made part of the supplemental work force. The RCAs did not need to be assigned to perform cancellation of box mail since it was not critical to operations. While the Postmaster's efforts to provide better local service are commendable, he cannot violate the National Agreement in the process of so doing. Rural carriers have been barred since 1978 from performing clerk work. The use of the RCAs cost overtime work opportunities for the clerk craft. There is no evidence that the RCAs were used under emergency conditions. The Union requests that the grievance be sustained, that the clerks be awarded overtime payment, both voluntary and forced overtime, up to a maximum of sixty (60) hours per week. The Union further requests that the undersigned retain jurisdiction to resolve any question arising from the calculation of the remedy.

POSTAL SERVICE CONTENTIONS

The Postal Service takes the position that it did not violate the terms of the National Agreement when RCAs were used across craft lines. The National Agreement does allow for the crossing of crafts. The clerks who reported for work later that 4:00 a.m. did not sign the overtime desired list. The use of the RCAs was required due to operational windows, including the need to get mail to the letter carriers for sorting and distribution to the boxes. The mail that had been placed in pick-up boxes by customers needed to be canceled for prompt processing. The facility was working with a shortage of seven (7) clerk craft employees. Nothing in the National Agreement prohibits the use of RCAs for limited time periods. The Postal Service seeks denial of the grievance.

DISCUSSION AND FINDINGS

The concept of crossing crafts was negotiated by the parties as far back as 1978. It is, therefore, a creature of the National Agreement. The National Agreement in effect at the time the instant grievance was filed contains a Memorandum of Understanding which states that the cross craft assignments of employees, on both a temporary and permanent basis, shall continue as they were made among the six crafts under the 1978 National Agreement. The 1978 National Agreement recognized the city letter carriers, maintenance employees, special delivery messengers. motor vehicle employees, postal clerks and mailhandlers as the six crafts.

Critical to this determination is Article I, Section 2, Exclusions, of the 1978 National Agreement. This provision clearly excludes rural letter carriers as being covered under the 1978 National Agreement. As such, it is clear that rural letter carriers are excluded from crossing crafts to perform duties which belong in any of the six listed crafts. While the Postal Service argues that the rural letter carriers were needed to meet certain operational windows, the terms of the National Agreement preclude rural letter carriers from performing those duties. It must be observed that the RCAs could have been used to perform the clerk craft duties if they had been given dual appointments, thereby allowing them to work as casual employees as part of the supplemental work force. There is also no evidence that the use of RCAs was related to an emergency situation. The RCAs were used because clerk staffing was not adequate at that time.

The question which remains to be resolved focuses on the remedy. The work day began at the Bowling Green, Ohio Post Office with the arrival of the first truck of the day at 4:00 a.m. Timekeeping records presented by the Union reveal that the RCAs were assigned to begin working at about the same time the first truck arrived. A number of window clerks were not scheduled to report until 8:00 a.m. to 8:30 a.m. The Postmaster observes that the window clerks did not sign the overtime desired list and the Postmaster felt it would serve no purpose to force them to come in earlier and work the overtime.

Under the terms of the National Agreement the Postmaster has the authority to force overtime if it was necessary to accomplish the movement of the mails. First he was required to offer the work to those employees who had signed the overtime desired list.[1] Those employees could be worked up to the maximum hours permitted under Article 8 of the National Agreement. If additional overtime hours were needed, the additional hours could be obtained by using the full-time employees who were not on the overtime desired list.

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[1] While the Postmaster maintains that none of the window clerks signed the overtime desired list, that contention needs to be verified through the examination of the facility's records.

The Union has requested that the undersigned retain jurisdiction to resolve any disputes that might arise concerning the calculation of the remedy. The undersigned will retain jurisdiction to resolve any disputes which might arise from the calculation of the following remedy. The Postal Service is to determine the number of hours worked by the RCAs, performing clerk craft duties, on a weekly basis. The Postal Service is directed to pay at the overtime rate those employees who signed the overtime desired list and who were not scheduled to report for work at about the time of the arrival of the first truck, up to four hours per day, or a maximum of sixty (60) hours per week, up to the number of hours worked weekly by the RCAs. The hours are to be distributed as equally as possible among these employees. If any hours which were worked by the RCAs remain, then the Postal Service is directed to pay those hours at the overtime rate to the employees who were not scheduled to report for work at about the time of the arrival of the first truck and who did not sign the overtime desired list.

Regular Arbitration Panel

IN THE MATTER OF THE ARBITRATION	)	
	)	GRIEVANT: Class Action
BETWEEN	)	
	)	POST OFFICE: Elyria, Ohio
UNITED STATES POSTAL SERVICE	)	
	)	CASE NO.: C94C-4C-C 96039198
AND	)	
	)	UNION NO.: RAM101
AMERICAN POSTAL WORKERS UNION, AFL-CIO	)	

BEFORE: CHRISTOPHER E. MILES, ARBITRATOR

APPEARANCES:

For the U.S. Postal Service:	Tia Hicks, Labor Relations Specialist
For the Union:	Paul Hern, Arbitration Advocate
Place of Hearing:	Elyria, Ohio
Date of Hearing:	February 27, 2004
Date of Award:	April 14, 2004
Relevant Contract Provisions:	Article 7
Contract Year:	2000-2003
Type of Grievance:	Contract

AWARD SUMMARY

The class action grievance filed in this matter is sustained. Based upon the particular circumstances presented herein, it is found that the Postal Service violated Article 7, Section 2, B and C, as well a Article 19 of the Agreement, when the Carriers were directed to perform Clerk Craft work which denied the Clerks the opportunity to spread the mail from the distribution cases to the Carriers' cases. As a remedy, payment for five hours per day at the straight time rate shall be divided evenly among the Clerk Craft employees who were adversely affected in this case. The remedy is applicable to the period of time from September 27, 1995 until July 27, 1996 and this Arbitrator shall retain jurisdiction to resolve any questions which may arise concerning the implementation of this Award.

Christopher E. Miles, Esquire
Labor Arbitrator

I. BACKGROUND

The class action grievance considered herein was filed by the Lorain County Area Local of the American Postal Workers Union (hereinafter referred to as the "Union") on behalf of the Clerk Craft employees of the United States Postal Service (hereinafter referred to as the "Postal Service") at the Main Post Office in Elyria, Ohio. The Step 2 Grievance Appeal Form, dated October 16, 1995, sets forth the following "Detailed Statement of Facts/Contentions":

> Carriers are crossing crafts and doing clerk work on a continuing basis (pulling and spreading mail). This violation has been grieved at the local level (LC/EL/RAM005), compensation was awarded the clerks involved, and the Union was assured by Management that this practice would not be condoned. This violation has also been grieved at the National level and upheld by arbitration to be clerk duties.

As the corrective action, the Union requested that:

> That the grievants be made whole, and compensated according to the rate requested in Step One of this grievance.

The parties met and discussed the grievance at Step 2 in accordance with the procedure contained in their collective bargaining agreement.[1] By letter dated February 20, 1995 (should be 1996), Ms. Myrna Lyons, Postmaster, issued the response of the Postal Service, as follows:

> Elyria Post Office has experienced many changes within the last year. The dispatch of mail has been irregular causing delays in the processing of mail. Clerks' schedules have been changed, carrier schedules have been changed and supervisors schedules and responsibilities have changed.
>
> We are constantly striving to provide timely delivery to our customers in Elyria. In order to have a more productive work force, and speed up delivery to satisfy our customers, management has modified office functions on both crafts NALC & APWU.
>
> Based on the —39, Management of Delivery Services, carriers have been authorized to make up to two withdrawals from the distribution cases prior to leaving the office, plus a final sweep as they leave.
>
> The times of withdrawals is a management decision based on availability of mail, and downtime on any craft.

Thereafter, the Union appealed the grievance to Step 3 for the following reasons:

> The Union continues its appeal on the issues of Carrier craft employees performing Clerk craft duties. Past practice, in accordance with the

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[1] Collective Bargaining Agreement Between American Postal Workers Union, AFL-CIO and U.S. Postal Service, November 21, 2000 – November 20, 2003 (hereinafter referred to as the "Agreement").

National Agreement, has transferred the performance of these duties from the Clerk craft to the Carrier craft. The Union contends this recent Management violation as blatant in nature, as their previous attempt (January, 1995) was properly grieved by the Local APWU, and so recognized by Local Management as violation to the extent of a resolution including award of monetary compensation to the Clerk craft. In addition, the Union cites the existence of several arbitration awards as further indisputable evidence of Management cross craft violation. As such, the Union vigorously pursues the corrective action as requested on Line 13 of the Step II Appeal Form and notes the following interpretive amendment of such as follows:

The Union respectively requests an amendment to the Corrective Action originally sought in this grievance. We would like to request that Management compensate the Clerk Craft with the appropriate monetary compensation for the amount of hours worked by the Carrier Craft performing Clerk Craft duties. Our observations have indicated that one pull of approximately seven minutes, being performed by forty nine carriers, would cost the Clerk Craft a minimum of 5.72 hours per day. This time does not include time allotted for each carrier making several other withdraws from the parcel post hampers, flat cases, hot case, and DPS mail (sometimes several withdraws of each). These withdraws consist of first class, and also third class, mail. We respectfully request also that any compensation due the Clerk Craft in the Elyria Post Office be divided evenly among the Clerk Craft employees. The Union requests that Management cease and desist the practice of Carriers doing Clerk duties. The Union requests the Grievant be made whole.

While Management contends that the Handbook Series M -39 (Management of delivery services) allows carriers to make up to 2 withdraws per day (116.6), the carriers are far exceeding this number of pulls. In addition, Management is circumventing the stipulation found in that same handbook (M -39) that requires 80% of the mail to be on the carriers cases before they punch in and report to their case (122.1b). This handbook also states that no carrier is to sweep a distribution case upon reporting to work, but report directly to their case (116.3), which clearly indicates that these duties (withdrawing mail) are functions of the Clerk Craft.

In addition, although the Union respects that the M -39, under Article 19, provides this ability for carriers to be authorized up to two withdrawals prior to leaving the office, plus a final sweep as they leave, it does not provide management to permit pulls in excess of those stipulated or provide a means to circumvent other appropriate Manual Section(s) under Article 19 regarding clerk craft duty responsibilities dealing with providing mail to the carrier craft for delivery.

While the Union recognizes and sympathizes with Management's striving to provide timely deliveries of the mail through modifications of office functions for craft employees, this is a goal that can be effectively earned without violations by Management on cross craft issues, as stipulated in the National Agreement.

The parties discussed the grievance at Step 3 and by letter dated June 3, 1996, Ms. Kelly D. Lewis, Labor Relations Specialist, denied the grievance by stating that:

> It is Management's position that above referenced grievances deal either with the accommodation of an employees physical restrictions for FECA claims or where carrier are ensuring that all available mail is collected for their routes prior to leaving to go on the street. In either case, no evidence exists that those individual and distinct acts constitutes assignment of these employees in the clerk craft nor has there been evidence to establish any negative effects on the clerk craft as a result of those actions.
>
> The remedy requested is inappropriate considering the facts fo the case, Accordingly, the grievance is denied.

Having been unable to resolve the grievance, the Union appealed the case to arbitration and the undersigned was appointed to hear and decide the issue. A hearing was conducted in Elyria, Ohio on February 27, 2004, at which time the parties were afforded full opportunity to present testimony and evidence, to cross-examine the witnesses, all of whom were sworn, and to make arguments in support of their respective positions. At the conclusion of the hearing, the parties summarized their arguments in oral closing statements and the record in this case was closed.

II. SUMMARY OF THE TESTIMONY AND EVIDENCE

Mr. Robert A. Michael testified that he began his employment with the Postal Service in 1984 as a Custodian and transferred to the Clerk Craft in 1985. Currently, he is a Clerk at the Elyria Post Office and also holds the positions of Clerk Craft Director and Union Steward. Mr. Michael stated that in 1995 he was a Distribution Clerk and an active officer in the Union, and he filed the grievance considered herein. He asserted that the work in question; i.e., withdrawing and spreading the mail, has always been Clerk work. He described the process for breaking down the mail. He revealed that there were 49 City routes and six Rural routes and noted that there was a pigeon hole for each route. He went on to say that the Carrier mail was specifically placed on the Carrier ledge from right to left. Mr. Michael pointed out that the flat mail was placed in a rolling case which contained about 21 Carrier routes and was then taken to the Carrier ledge. According to Mr. Michael, the mail was staged according to its importance and some of the mail comes off the truck already pre-sorted for the Carriers.

Mr. Michael emphasized that the work in question was assigned to Clerks from 1985 until January 1995 when the Carriers were instructed to go to the pigeon holes and the distribution cases and pull their own mail. At that time, he filed a grievance claiming that the work had

historically been Clerk work and Postmaster Myrna Lyons resolved the grievance by instructing the Carriers to not get their mail and providing a monetary remedy to the Clerks.

According to Mr. Michael, there were 36 Clerks at the time and 49 Carrier routes in September 1995, and Management again instructed the Carriers to pull their mail. He recalled that Management agreed that the work in question was Clerk work, however, it was argued that it was a change that needed to be made. He went on to say that Management pointed out at Step 2 that changes had to be made due to the mail flow coming out of Cleveland. Mr. Michael stated that he calculated 45 minutes per Clerk per day was lost. He indicated that Management estimated that 10 to 20 minutes per day per Clerk and per Carrier route which amounted to between 8 and 16 hours per day. Mr. Michael asserted that he also claimed during the grievance process that the action was unilateral. Mr. Michael stated that when he showed the Step 4 resolution dated August 28, 1995 concerning the spreading of mail to the letter carrier cases to Ms. Sherry Drummond, Manager, Customer Service, she returned the duties to the Clerk Craft effective July 27, 1996. He stated that the parties agreed to stop the remedy as of that date; however, the grievance was not resolved.

Mr. Michael indicated that the Carrier starting times were changed to earlier and the Clerk starting were changed to later, which resulted in the window of time for the Clerks to get the mail out being shortened. He pointed out that 122.1 of the M-39 Handbook required that 80% of the Carrier mail should be at the Carrier ledge when the Carriers reported for work.

On cross-examination, Mr. Michael asserted that 80% of the mail was on the Carrier ledge prior to the times the Carriers were instructed to pick up their mail from the letter line. He pointed out that the letter dated August 1, 1995 stated that Carriers will no longer withdraw and spread mail. Mr. Michael recalled that the five or six Distribution Clerks were scheduled to start at 3:00 AM during the period of time in question when they had previously been scheduled to start at 2:00 AM. He noted, however, that other Clerk craft employees came in at various times. In addition, he indicated that some Window Clerks came in on overtime to help spread the mail. He estimated that 20 of the 36 Clerks were involved in spreading the mail and he indicated that the starting times for those 20 Clerks was moved forward.

Ms. Sherry Drummond testified that she has been employed by the Postal Service for 27 years and currently holds the position of Manager, Customer Services. She acknowledged that she signed the letter dated August 1, 1996 agreeing that Carriers would no longer withdraw and spread mail. She explained that "spreading the mail" refers to the Clerks taking the mail from the mail processing side to the Carrier side and leaving it at each of the Carriers' stations.

Ms. Drummond recalled that Management directed the Carriers to pull the mail when they had cased their route and were standing idle while waiting for the time to leave the facility. She asserted that Carriers are permitted under the provisions of the M -39 and the M -41 Handbooks to pull mail. She emphasized that there were unforeseen circumstances that also caused a delay in processing the mail; i.e., sick leave and annual leave. She also noted that there were times when a truck would arrive as much as an hour late and Carriers were directed to pull their mail so that the first and second class mail could be sorted into the distribution cases. Manager Drummond described the responsibilities of the Clerks in this regard and maintained that they did not change.

On cross-examination, Ms. Drummond stated that Carriers have never spread mail in the Elyria Post Office and they have never gone on stand-by time in operation 340. She emphasized that she was once a Clerk, as well as the Executive Vice President of the Union, and she said she would not let Carriers take work away from the Clerks. However, she asserted that when Carriers are standing around idle and the manpower on the Clerk side is not available due to sick leave, annual leave, or other unforeseen circumstances, it is good business sense to use the Carriers to help out in accordance with Article 3 Managements Rights.

Mr. Michael Elek testified that he is the Postmaster of the Elyria Post Office. Postmaster Elek indicated that in accordance with the M -41 Handbook, the Carriers are expected to take two withdrawals and the final pull before leaving the facility. He stated that there has been a change in the floor plan and the Clerks now make a withdraw from their case and put the mail on a pie cart which is placed near the time clock so that the Carriers can pick up their mail when they clock in. In this regard, he submitted that it was more efficient to do it this way.

III. RELEVANT PROVISIONS OF THE AGREEMENT

ARTICLE 7
EMPLOYEE CLASSIFICATIONS

Section 2. Employment and Work Assignments
A. Normally, work in different crafts, occupational groups or levels will not be combined into one job. However, to provide maximum full-time employment and provide necessary flexibility, management may establish full-time schedule assignments by including work within different crafts or occupational groups after the following sequential actions have been taken:

1. All available work within each separate craft by tour has been combined.

2. Work of different crafts in the same wage level by tour has been combined.

The appropriate representatives of the affected Unions will be informed in advance of the reasons for establishing the combination full-time assignments within different crafts in accordance with this Article.

B. In the event of insufficient work on any particular day or days in a full-time or part-time employee's own scheduled assignment, management may assign the employee to any available work in the same wage level for which the employee is qualified, consistent with the employee's knowledge and experience, in order to maintain the number of work hours of the employee's basic work schedule.

C. During exceptionally heavy workload periods for one occupational group, employees in an occupational group experiencing a light workload period may be assigned to work in the same wage level, commensurate with their capabilities, to the heavy workload area for such time as management determines necessary.

IV. CONTENTIONS OF THE PARTIES

A. Union

The Union believes that it has proven that the Postal Service violated the provisions of the Agreement when Carriers were assigned to withdraw and spread mail to Carrier cases between September 27, 1995 and July 27, 1996. According to the Union, the Clerk Craft has jurisdiction of these particular duties, specifically with regard to withdrawals from the hampers and withdrawals from trays, our of boxes, gurneys, letter distribution cases, flats distribution cases, pie carts, machines, and sacks of mails, APC's and GPC's, and taking it to the Carrier cases. The Union emphasizes that this includes all classes of mail; i.e., first class, pre-sort, small parcels and bundles. The Union submits that the Clerk Craft employees have historically performed these duties until 1995. In addition, it claims that the provisions of Article 7, Section 2.A., provides for multi-craft full time assignments and restricts the crossing of craft lines, except in cases when it is necessary to make a full time position. The Union maintains that there has never been a multi-craft position at the Elyria Post Office. It calls attention to Section 2.B which concerns situations when there is insufficient work in an employee's assignment. However, according to the Union, there has been no proof that there was a light work load for the Carrier Craft employees who were on operation 340 because they did not have mail and they were just waiting.

The Union maintains that the unforeseen circumstances; i.e., sick leave and call-ins, constitute five percent of the work force. However, it argues that it is not a daily occurrence and does not create an unforeseen emergency condition, rather sick leave and call-ins are a normal business condition. The Union points out that the Management witnesses defined "spreading mail" as taking the mail from the mail processing area to the Carrier ledges and this is exactly what

the Union is protesting. It rejects Manager Drummond's testimony that the Carriers at Elyria never spread mail, especially when she signed the statement that the Carriers will no longer withdraw and spread mail. The Union asserts that since the work in question has been performed by the Clerk Craft employees for ten years it is an established binding past practice.

The Union asserts that the Agreement was made at the National level and the local Management must comply with the provisions therein. The Union points out that the Postal Service made the same assignment in early 1995 and the grievance was resolved locally to cease and desist, a return of the work to the Clerk Craft, and a payment to the Clerk Craft employees who were denied the work. Yet, a few months later, the Postal Service again assigned the work to the Carrier Craft in violation of the local grievance settlement. For this reason, the instant grievance was filed. The Union acknowledges that the Postal Service issued a letter dated August 1, 1996 stating that "effective July 27, 1996, city carriers at the Elyria Post Office will no longer withdraw and spread mail" and that the duties would be returned to the Clerk Craft. In this regard, it agrees that the remedy would cease as of July 27, 1996; however, it argues that no payment was made to the affected Clerk Craft employees and that is why the grievance was not resolved.

The Union submits ten arbitration decisions in support of its position and requests that the grievance be sustained; i.e., that the work be returned to the Clerk Craft employees, that the affected employees be compensated for lost work, and that the Step 4 resolution be enforced and the Postal Service be directed to cease and desist from making such assignments. With respect to the payment to the Clerks, the Union points out that Postmaster Elek clearly stated in writing that "it takes anywhere from 10 - 20 minutes for Clerk to spread the mail to each route." In this regard, it computes that the total time spent on spreading mail for 49 routes is more than eight hours per day at 10 minutes per route and more than 16 hours per day at 20 minutes per route. Mr. Michaels stated it took 45 minutes per day by 20 Clerks to spread the mail to the Carrier routes, which would be 16 hours of work. Therefore, the Union requests that the Clerks be compensated for 16 hours of work per day.

B. Postal Service

The Postal Service contends that the Union has not carried its burden of proving there was a violation of Article 7 of the Agreement concerning pulling and spreading of mail at the Main Post Office in Elyria, Ohio. The Union cannot lay sole claim to the work of making mail withdrawals up to three times per day. According to the Postal Service, the work is not within the sole jurisdiction of the Clerk Craft and therefore the provisions of Article 7, Section 2 have not been violated.

The Postal Service submits that many changes were experienced at the Elyria Post Office due to the dispatch of mail being irregular and the Clerks were having difficulty getting the mail up in time. This caused delay in the processing of mail and it required changes in the delivery services. The Postal Service calls attention to its Article 3 Management Rights and notes that Local Management modified the office functions for the crafts. In this regard, it points out that the M-39 and M-41 Handbooks authorize the Carriers to make up to two withdrawals plus a final pull of mail before leaving the facility and the times of the sweeps are a Management decision based upon the availability of mail and the downtime of any craft. Therefore, this is part of the Carriers' duties and it has nothing to do with the Clerks. It asserts that the Carriers are not "spreading" the mail, they are merely picking up trays of their own DPS mail and taking it back to their own cases. With respect to the Union's claim that unforeseen circumstances of sick leave and annual leave are part of the business condition and is not an emergency situation, the Postal Service maintains that the unforeseen situations referenced by Ms. Drummond also included the changes of dispatch times, operational changes and late arriving trucks. The Postal Service argues that it does not make good business sense to let employees stand idle when they can help to get the mail out in order to service its customers.

Finally, the Postal Service submits that the remedy requested in inappropriate, especially since there was no contract violation established. The Postal Service requests that the grievance be denied as it has no merit.

V. DISCUSSION AND FINDINGS

The issue in this case is whether the Postal Service violated the Agreement when it directed the Carriers at the Elyria, Ohio Post Office to obtain their mail from the distribution cases rather than having it "spread" by the Clerks. Mr. Michael, the Clerk Craft Director and Union Steward, testified that the Carriers were instructed upon beginning work to go to the distribution cases and pull their own mail. Additional withdraws from the distribution cases would be made by the Carriers during the morning prior to them leaving to deliver their routes. According to Mr. Michael, the same situation occurred in January 1995 and a grievance was filed claiming that this was Clerk Craft work. Mr. Michael said the grievance was resolved by the Postmaster at the time, Ms. Myrna Lyons, by instructing the Carriers not to get the mail and she also granted a monetary remedy to the Clerks. However, Mr. Michael said that the Carriers were again instructed to pull their mail from the distribution cases. Mr. Michael indicated that he discussed the matter with Ms. Sherry Drummond, Manager, Customer Service, at which time he showed her a Step 4 resolution

dated August 28, 1995 concerning the spreading of mail to Carrier cases. Thereafter, she returned the duties to the Clerk Craft, effective July 27, 1996. She issued the following notice dated August 1, 1996 concerning the instant grievance:

> This is to inform you that effective July 27, 1996, city carriers at the Elyria Post Office will no longer withdraw and spread mail.
>
> These duties will be returned to the Clerk Craft.

However, since no monetary remedy was agreed to, this grievance was processed to arbitration.

Clearly, according to Methods Handbook M - 39, 80% of the mail is to be at the Carriers' cases when they report for work.[2] Furthermore, according to Handbook PO - 601, Carriers are to report directly to their case and begin casing mail with no unnecessary delays.[3] In addition, pursuant to Methods Handbook M - 41, "As much as possible, clerks or mail handlers withdraw mail (especially that mail received early in the morning) from distribution cases" and place it on the Carrier's desks.[4] Consequently, this 80% of the mail is to be "spread" to the Carriers by the Clerks (there are no Mailhandlers who work at the Elyria Postal facility). Thus, although the Carriers were obtaining their own mail and not "spreading" the mail to other Carriers, it is my opinion that a violation occurred in this case. As noted, 80% of the Carriers' mail is to be at their cases when they report directly to their case and the Clerks are the ones to get the mail there.

On the other hand, Section 116.6 of the Methods Handbook M - 39 states that:

> Carriers may be authorized to make up to two withdrawals from the distribution cases prior to leaving the office, plus a final cleanup sweep to include Delivery Point Sequence mail as they leave the office.

According to the testimony of Ms. Drummond, Carriers were directed to pull the mail when they had cased their route and were standing idle while waiting to leave the facility. It is my opinion that there is nothing improper about this directive from the Postal Service to the Carriers since Carriers can make two withdraws and a final cleanup sweep. Arbitrator Philip W. Parkinson ruled that:

> The Postal Service did not violate Article 7, Section 2 of the Agreement by permitting letter carriers to make withdrawals of mail from the distribution cases. The Handbook language establishes that letter carriers are

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[2] Section 122.11(b)

[3] Section 341

[4] Section 922.51(b)

generally permitted to make up to 3 sweeps per day from the distribution cases. [5]

Arbitrator Michael J. Pecklers stated that:

> Union exhibits in evidence are also instructive. Exhibit U-1 is the PO 601 Sections 221 and 331 of which require that the carriers processed letters and flats be placed on their cases before they report for work. Section 341 goes on to say that carriers should report directly to their cases with no unnecessary delay. Handbook PO 401 at Exhibit U-2 further instructs that there be two dispatches to delivery units each morning, with 80% of the same day delivery mail forded on the first dispatch.
>
> When the above handbooks are harmonized, they mandate a conclusion that bargaining unit clerks are required to perform two (2) full sweeps each day, on in the AM and one in the PM. By doing so, the letters and flats are on or near the carriers' cases before they report for work, and when they return from their routes. Subject to this limitation, and pursuant to the handbooks, carriers are permitted to sweep their own mail.[6]

However, after reviewing the record developed in this case, what was asserted by the Postal Service is not exactly what was occurring. Although the Carriers were not technically spreading mail to other Carrier routes, they were obtaining their own mail instead of reporting directly to their cases where 80% of their mail should be waiting for them. Consequently, the Clerks were deprived of the work of taking or spreading the mail to the 49 carrier cases. Furthermore, the record reveals that Carriers were making the initial withdrawal of their mail and were making more than two withdrawals and a final withdraw when leaving for the street. The grievance asserts that Carriers were "far exceeding this number of pulls." In a case decided by Arbitrator Katherine J. Thomson,[7] she noted that:

> The Handbooks and Step 4 agreements make it clear that, as a normal practice, clerks are to take the mail that has been sorted by route to the carriers' desks prior to or at the time the carriers arrive. The Union concedes that occasionally this may not happen because of staffing or dispatch problems. The Union did not challenge this occasional variation, but did challenge the Orinda office's changed practice preventing the clerks from spreading the mail and directing carriers to pick up their own mail.

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[5] USPS and APWU, Case No. C94C-4C-C 96081260, June 14, 2000, at page 9.

[6] USPS and APWU, Case No. A98C-4A-C 00145822, September 12, 2001, at page 14.

[7] USPS and APWU, Case No. F90C-4F-C 93055004, December 24, 2001.

She concluded that:

> While there may have been occasional times in 1993 that clerks were understaffed or carriers had too little work, there was no basis for the prolonged year assignment of the initial withdrawal of mail to the carriers. The assignment lasting seven-and-a-half years violated Article 7.2 of the National Agreement.

In view of all the above, it is found that the Postal Service violated Article 7, Section 2, B and C, of the Agreement, as well as Article 19, Handbooks and Manuals, when Carriers were directed to perform Clerk work. With regard to the remedy in this case, it is noted that Mr. Michael testified that 20 of the 36 Clerks at the Elyria Post Office were involved in spreading the mail. In addition, reference was made to a letter signed by the current Postmaster, Mr. Elek. He estimated in a letter dated March 2, 2000 concerning another grievance that it took anywhere from ten to 20 minutes for the Clerks to spread the mail to each route. According to Mr. Michael, it took each Clerk 45 minutes per day to spread the mail to the 49 Carrier routes. In my considered opinion, after the 80% of the mail is spread to the Carrier cases by the Clerks then it is entirely permissible for the Carriers to be authorized to make additional withdrawals from the distribution cases of their own mail for their own routes. This may be done twice and a final sweep prior to them leaving for their deliveries. Consequently, since the Carriers may make as many as three withdrawals, a remedy is granted of 15 minutes for each of the 20 Clerks for the spreading of mail which was denied the Clerks during the period of time in question; i.e., September 27, 1995 until July 27, 1996. This amounts to 300 minutes or five hours per day of Clerk Craft work that was denied the 20 Clerks at the Elyria Post Office. Therefore, payment shall be made for five hours per day at the straight time rate and the amount shall be divided evenly among the Clerk Craft employees who were adversely affected in this case. The Arbitrator shall retain jurisdiction to resolve any questions that may arise concerning the implementation of this Award.

AWARD

The class action grievance filed in this matter is sustained. Based upon the particular circumstances presented herein, it is found that the Postal Service violated Article 7, Section 2, B and C, as well a Article 19 of the Agreement, when the Carriers were directed to perform Clerk Craft work which denied the Clerks the opportunity to spread the mail from the distribution cases to the Carriers' cases. As a remedy, payment for five hours per day at the straight time rate shall

be divided evenly among the Clerk Craft employees who were adversely affected in this case. The remedy is applicable to the period of time from September 27, 1995 until July 27, 1996 and this Arbitrator shall retain jurisdiction to resolve any questions which may arise concerning the implementation of this Award.

Christopher E. Miles, Esquire
Labor Arbitrator

April 14, 2004